The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
Division of Solid and Hazardous Waste
Division of Water Pollution Control

HAZARDOUS WASTE REGULATIONS FOR MASSACHUSETTS

Public Hearing Draft

Amendments and Additions to Regulations

Spring 1986

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Governor

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While supplies last, a copy of this
public hearing draft may be obtained
by a written request made to:

Dr. Karl Eklund, Director
Regulatory Task Force
Division of Solid and Hazardous Waste, DEQE
1 Winter Street, 5th floor
Boston MA 02108

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Approved by Daniel Carter, State Purchasing Agent

S. Russell Sylva
Commissioner

The Commonwealth of Massachusetts

Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
Division of Solid and Hazardous Waste
One Winter Street, Boston, Mass. 02108

Dear Citizen,

I am pleased to send you these copies of Public Hearing Drafts dealing with amendments and additions to the Massachusetts comprehensive hazardous waste regulations. These regulatory amendments have been developed with the goals of further strengthening, clarifying and extending the hazardous waste management regulations in order to better protect the public health, safety and welfare, and the environment, and to ensure that Massachusetts maintains its authority to administer its hazardous waste program in lieu of the federal program.

The process of developing and further refining the Department's regulations is ongoing. The Department continues to benefit from the cooperation of industry, environmental groups and other concerned citizens in addressing these complex issues.

After reviewing these Public Hearing Drafts, I hope that you will comment on them and that you will attend one of the public hearings to be held by the Department in March. Your comments will be carefully considered as we continue to develop and amend the Departments regulations so that they will contribute to improving the public health, safety and welfare, and the environment, in such a way as to maintain the economic well-being of the Commonwealth.

Very truly yours,

S. Russell Sylva
Commissioner

SRS/KE/dmd

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Notice

Notice is hereby given that the Department of Environmental Quality Engineering will hold six (6) public hearing at the times and places set forth below. The hearings are intended to accomplish the following purposes.

First, the hearings will provide opportunity to comment on proposals to make permanent emergency regulations which the Department promulgated, pursuant to the authority of G.L. c. 21C, § 4 and 6, on December 31, 1985 and which were published in the Massachusetts Register on January 9, 1986. These emergency regulations amend 310 CMR 30.000. These provisions amend the Department's recycling regulations, provide for the approval of research, development and demonstration facilities if permitted by the Environmental Protection Agency, provide alternative mechanisms by which facilities can demonstrate financial responsibility, and lower the amounts of financial responsibility which such facilities must demonstrate.

Second, the hearings will provide opportunity for comment on proposed regulations for the management of materials that would be hazardous wastes if disposed of, but instead are recycled. These regulations will allow the Department's regulation of these materials to conform to the provisions of the Solid Waste Disposal Act (commonly known by its former name of RCRA) a amended.

Third, the hearings will provide opportunity for comment on proposed regulations governing polyhalogenated aromatic hydrocarbons (including Dioxins), prohibiting certain activities in underground mines or caves, etc., expands the definition of nousenold waste, clarifies the classification of certain mixtures, provides for a test for free liquids in wastes, limits the amount of time a small quantity generator can accumulate wastes, requires additional reporting of activities, adds to the conditions on liners of surface impoundments and landfills, adds to the conditions of facility licenses to require corrective actions, and clarifies the procedure for filing a discrepancy report. These regulations will allow the Department's regulations to conform to the provisions of the Solid Waste Disposal Act as amended.

All the above amendments would be adopted pursuant to the authority of G.L. c. 21C, § 4 and 6 and G.L. C 21E, §6. Fourth, the Division of Water Pollution Control proposes to amend 314 CMR 2.00, 3.00, 5.00 and 8.00 to incorporate by reference these proposed amendments, and all prior amendments, of 310 CMR 30.000. These amendments would be adopted prusuant to the authority of G.L. c. 21, § 27(12), 34 and 43.

Copies of the emergency regulations, and the proposed new regulations, are available for inspection at each Regional Planning Agency and each DEQE regional office. Copies may be obtained, free of charge, at the DEQE Boston office, One Winter Street. The public hearings will be held as follows:

March 12, 1986	March 13, 1986	March 14, 1986
1 p.m	10 a.m.	10 a.m
PITTSFIELD	WOBURN	BOSTON
City Hall	DEQE N.E. Regional Office	DEQE Boston Office
66 Allen Street	5 Commonwealth Avenue	1 Winter Street
City Council Chamber	Conference Room	10 Fl. Conference Rm.

March 12, 1986	March 13, 1986	March 14, 1986
7 p.m.	7 p.m.	7 p.m.
HOLYOKE	WORCESTER	LAKEVILLE
Holyoke Comm. College	U.Mass. Medical Center	Lakeville State Hospital
303 Homesdtead Avenue	55 Lake Avenue	Main Street
Room G 307	Conference Room A	1st Fl. Conference Room

Testimony may be presented orally and/or in writing at the public hearings. Testimony on the emergency regulations may be presented in writing no later than March 14, 1986. Testimony on all other proposed regulatory amendments may be presented in writing no later than March 21, 1986. Written comments shall be addressed to: Dr. Karl Eklund, Regulatory Task Force, Division of Solid and Hazardous Waste, DEQE, One Winter Street, Fifth Floor, Boston, MA 02108.

By order of the Department

S. Russell Sylva,
Commissioner

Thomas C. McMahon, Director
Division of Water Pollution Control

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GENERAL INTRODUCTION

These public hearing drafts of regulatory additions and amendments is sufficiently diverse and extensive that it is convenient to divide it into three parts.

The first part consists of amendments promulgated as emergency regulations on December 31, 1985. The first group provides for alternative means to satisfy the requirement for financial responsibility in case of pollution liability, and is a response to the unavailability of the pollution liability insurance called for in the regulations. They also reduce the amounts of liability covered to correspond to the federal requirements. It is expected that these amendments will be superceded by legislative action early in 1986.

The second group extends the ban on recycling listed wastes and sludges until July 1, 1986. It is expected that these will be superceded by the comprehensive recycling regulations described below.

The third group provides a mechanism for approving and honoring a Research, Development and Demonstration permit issued by the EPA. It is expected that these will be superceded by regulations for state-issued RD&D permits in the near future.

The second part of these drafts consists of a comprehensive redrafting of the regulations for recycling materials that would be hazardous wastes if disposed of. These regulations are a synthesis of the existing Massachusetts recycling regulations, the proposed regulations for burning waste oil that were discussed at public hearings in Summer 1985, and the EPA final rules of January 4, 1985 and November 29, 1985. It is intended that these regulations encourage recycling as an alternative to disposal whenever that can be done without creating a significant potential hazard to the public health, safety and welfare, and the environment.

The third part consists of regulatory changes required to conform to recent changes in federal regulations for the management of hazardous waste. G.L. c. 21C requires that the state regulations be "consistent with RCRA" and the final authorization of Massachusetts by the EPA requires that Massachusetts' regulations be "at least as stringent" as federal regulations. The Hazardous and Solid Waste Amendments of 1984 stimulated a number of new federal regulations in 1985, and these amendments are intended to provide conforming changes to those new federal regulations that are more stringent than current Massachusetts regulations. This part also includes amendments that will cause Massachusetts' regulations on water pollution to conform to the hazardous waste regulations.

In each part the text of the proposed amendments and additions is preceded by a discussion of the background and the content of the individual amendments.

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PART 1

EMERGENCY REGULATIONS OF DECEMBER 31, 1985

1. Financial Responsibility for Pollution Liability

2. Interim Recycling Regulations

3. Research, Development and Demonstration Permit Approvals

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Financial Responsibility for Pollution Liabilities

At the time the Phase II pollution liability insurance requirements for treatment, storage, and disposal facilities were imposed in early 1984, the required coverage was widely available and competition in the insurance industry was steadily reducing premium costs. Since that time, the market has been steadily shrinking. As of January 1, 1986, all standard General Liability insurance policies began excluding pollution liability for sudden accidents. Only a handful of facilities have been able to "buy back" sudden coverage and only at exorbitant premiums, high deductibles and reduced protection.

By issuing emergency regulations which took effect January 1, 1986, the Department sought to avert a shutdown of the majority of the licensed facilities in the state. These regulations: (1) reduce the required coverage for sudden accidental occurrences to $1-million per occurrence, with a $2-million annual aggregate, (2) reduce the required coverage for non-sudden accidental occurrences to $3-million per occurrence, with a $6-million annual aggregate, (3) reduce the universe of facilities required to have coverage for non-sudden accidental occurrences to include only those with surface impoundments, landfills, or land treatment facilities, (4) allow the coverage to be obtained in the form of a trust fund, surety bond, and/or letter of credit, in addition to insurance, and (5) allow an owner or operator to have this coverage be for a group of facilities, rather than separately for each facility.

In addition, these regulations provided that facilities not in compliance would have until January 31, 1986, to find insurance or suspend their activities and subsequently close down by March 31, 1986, if in continued non-compliance. The most important result of the emergency regulations was to provide a few weeks' time for intermediate legislative relief.

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1. Effective December 31, 1985 through March 31, 1986, 310 CMR 30.901(1)(b) is hereby amended by inserting after the first sentence the following:-

(b) From January 31, 1986 through March 31, 1986, the requirements of 310 CMR 30.908(2) apply only to owners or operators of hazardous waste landfills, surface impoundments, and land treatment facilities.

2. Effective December 31, 1985 through March 31, 1986, the introductory clause of 310 CMR 30.901(4) is hereby amended by striking out the words "existing facility" and inserting in place thereof the words:- facility in existence on October 15, 1983.

3. Effective December 31, 1985 through March 31, 1986, 310 CMR 30.901(4)(b) is hereby amended by inserting, after the word "30.908", the following:- , as in effect on October 15, 1983.

4. Effective December 31, 1985 through March 31, 1986, 310 CMR 30.901 is hereby further amended by inserting after subsection (5) the following subsection:-

(6) The owner or operator of each facility in existence on December 31, 1985 shall, by no later than January 31, 1986, provide to the Department evidence of a financial mechanism meeting all requirements of 310 CMR 30.908, as in effect on December 31, 1985.

5. Effective December 31, 1985 through March 31, 1986, 310 CMR 30.908 is hereby amended by striking out said section and inserting in place thereof the following section:-

30.908: Liability Requirements

(1) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities in Massachusetts, shall demonstrate assurance of financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence arising from operation of the facility(ies). The owner or operator of each facility shall give notice to the Department of every claim for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such notice to the Department as soon as possible and in any event no later than thirty (30) days after learning of such claim. The owner or operator of each facility shall

give notice to the Department of every judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility. The owner or operator of each facility shall give such notice to the Department as soon as possible and in any event no later than thirty (30) days after learning of said judgment. The owner or operator of each facility shall submit to the Department a copy of every judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility. The owner or operator of each facility shall submit a copy of such judgment to the Department as soon as possible and in any event no later than thirty (30) days after receiving a copy thereof. Subject to the provisions of 310 CMR 30.908(3), (4), and (5), the owner or operator of each facility, or a group of such facilities in Massachusetts, shall have and continuously maintain coverage for sudden accidental occurrences in the amount of at least $1-million per each sudden accidental occurrence with an annual aggregate of at least $2-million, exclusive of legal defense costs. Subject to the provisions of 310 CMR 30.908(5), (6), and (7), the owner or operator of each facility, or a group of such facilities in Massachusetts, shall have and continuously maintain such coverage using the options specified in 310 CMR 30.908(1)(a) through (d).

(a) An owner or operator may demonstrate the required coverage by having liability insurance, as specified in 310 CMR 30.901(2) or (6), which conforms to 310 CMR 30.908(1)(a).

1. Each liability insurance policy shall include a Hazardous Waste Facility Liability Endorsement (the "endorsement") and may be evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in 310 CMR 30.909(6). The wording of the certificate of insurance shall be identical to the wording specified in 310 CMR 30.909(7). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of liability insurance to the Department. If requested by the Department, the owner or operator shall provide a signed duplicate original of the liability insurance policy. An owner or operator of a facility shall submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department within the applicable period prescribed in 310 CMR 30.901(2) or (6).

2. At a minimum, the insurer shall be licensed to transact the business of insurance in Massachusetts, or authorized to provide insurance as an excess or

surplus lines insurer in Massachusetts, or a risk retention group lawfully providing insurance to its members in Massachusetts.

(b) An owner or operator may demonstrate the required coverage by establishing a sudden accidental occurrence liability trust fund, as specified in 310 CMR 30.901(2) or (6), which conforms to 310 CMR 30.908(1)(b), and by sending an originally signed duplicate of the trust agreement to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The trustee shall be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by the Massachusetts Commissioner of Banking, or the trustee shall be a national bank.
2. The wording of the trust agreement shall be identical to the wording specified in 310 CMR 30.909(8)(a), and the trust agreement shall be accompanied by a formal certification of acknowledgement identical to the wording specified in 310 CMR 30.909(8)(b).
3. On the date of the initial establishment of the sudden accidental occurrence liability trust fund, the value of the fund shall be at least two million dollars ($2,000,000), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).
4. If an owner or operator substitutes other financial assurance as specified in 310 CMR 30.908(1) for all or part of the sudden accidental occurrence liability trust fund, he may submit a written request to the Department for release of the amount in excess of the amount to be covered by the sudden accidental occurrence liability trust fund.
5. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the sudden accidental occurrence liability trust fund in satisfaction of the judgment by submitting to the Department a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.
6. After receiving the material described in 310 CMR 30.908(1)(b)5, the Department shall determine whether the judgment was either (1) rendered by the highest

court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Department shall instruct the trustee to pay to the person who obtained the judgment such amounts, not to exceed the amount of the judgment, as the Department may specify in writing.

7. No trust shall be terminated without prior written consent of the Department. The Department may agree to termination of the trust when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(1), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(c) An owner or operator may demonstrate the required coverage by obtaining a surety bond which conforms to 310 CMR 30.908(1)(c) and by submitting the surety bond to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The surety company(ies) issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond shall be identical to the wording specified in 310 CMR 30.909(9).

3. An owner or operator who uses a surety bond to satisfy the requirements of 310 CMR 30.908 shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder shall, in accordance with instructions from the Department, either be paid by the surety directly to a person described in 310 CMR 30.908(1)(c)5 or deposited by the surety directly into the standby trust fund. This standby trust fund shall meet the requirements in 310 CMR 30.908(1)(b), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Department with the surety bond; and

b. Until the standby trust fund is funded pursuant to the requirements of 310 CMR 30.908, the following are not required: (i) payment into the trust fund as specified in 310 CMR 30.908(1)(b); (ii) annual valuations as required by the trust agreement [See 310 CMR 30.909(8)(a)(Section 10)]; and (iii) notices of nonpayment as required by the trust agreement [see 310 CMR 30.909(8)(a)(Section 15)].

required by the Department pursuant to 310 CMR 30.908(4) or (5).

9. Under the terms of the bond, the surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not take effect, however, until at least one hundred twenty (120) days after the date of receipt of the notice of cancellation by both the owner or operator and the Department, as shown by the later return receipt.

10. No bond shall be cancelled without prior written consent of the Department. The Department may agree to cancellation of the bond when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(1), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(d) An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which conforms to 310 CMR 30.908(1)(d) and by submitting the letter to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The institution issuing the letter of credit shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Massachusetts Commissioner of Banking, or the institution shall be a national bank.

2. The wording of the letter of credit shall be identical to the wording specified in 310 CMR 30.909(10).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 310 CMR 30.908(1) shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Department, either be paid by the issuing institution directly to a person described in 310 CMR 30.908(1)(d)8 or deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in 310 CMR 30.908(1)(b), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Department with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of 310 CMR 30.908, the following are not required: (i) payment into the trust fund as specified in 310 CMR 30.908(1)(b); (ii) annual valuations as required by the trust agreement [See 310 CMR 30.909(8)(a)(Section 10)]; and (iii) notices of nonpayment as required by the

4. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the surety bond in satisfaction of the judgment by submitting to the Department a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

5. After receiving the material described in 310 CMR 30.908(1)(c)4, the Department shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Department shall instruct the trustee to pay to the person who obtained the judgment such amounts, not to exceed the amount of the judgment, as the Department may specify in writing.

6. The bond shall guarantee that the owner or operator shall:

   a. Fund the standby trust fund in an amount equal to either the sum of the judgment described in 310 CMR 30.908(1)(c)5 and the costs of administering said fund, or the amount of the penal sum, whichever is less, within fifteen (15) days after the Department or a court of competent jurisdiction issues an order to that effect; or

   b. Provide alternate financial assurance as specified in 310 CMR 30.908, and obtain the Department's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and by the Department of a notice of cancellation of the surety bond from the surety.

7. Under the terms of the bond [see 310 CMR 30.909(9)], the surety shall become liable on the bond obligation when the owner or operator does not perform as guaranteed by the bond [see 310 CMR 30.909(9)].

8. The penal sum of the bond shall be at least two million dollars ($2,000,000), or such other amount as

trust agreement [see 310 CMR 30.909(8)(a)(Section 15)].

4. The letter of credit shall be accompanied by a letter from the owner or operator which shall state:
   a. The letter of credit number;
   b. The name of the issuing institution;
   c. The date of issuance of the letter of credit;
   d. The EPA identification number(s) of the facility(ies);
   e. The name(s) and address(es) of the facility(ies); and
   f. The amount of funds assured by the letter of credit.

5. The letter of credit shall be irrevocable and shall be issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, no later than one hundred and twenty (120) days before the current expiration date pursuant to the terms of the letter of credit, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred and twenty (120) days shall not begin before the date when both the owner or operator and the Department have received the notice, as shown by the later return receipt.

6. The letter of credit shall be issued in an amount at least two million dollars ($2,000,000), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).

7. If an owner or operator substitutes other financial assurance as specified in 310 CMR 30.908(1) for all or part of the amount of the letter of credit, he may submit a written request to the Department for release of the amount in excess of the amount to be covered by the letter of credit.

8. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment by submitting to the Department a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the

time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

9. After receiving the material described in 310 CMR 30.908(1)(d)8, the Department shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Department shall instruct the institution issuing the letter of credit to pay either to the person making the claim or into the standby trust fund, or the Department shall instruct the trustee of the standby trust fund, to pay to the person who obtained the judgment such amounts, not to exceed the amount of the judgment, as the Department may specify in writing.

10. If the owner or operator does not establish alternate financial assurance as required by 310 CMR 30.908(1) and does not obtain written approval from the Department of any such alternate financial assurance within ninety (90) days of receipt by both the owner or operator and by the Department of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section or has failed to obtain written approval by the Department of such assurance.

11. No letter of credit shall be terminated without prior written consent of the Department. The Department may return the letter of credit to the issuing institution for termination when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(1), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(2) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility which is either described in 310 CMR 30.901(1)(b) or so required by the Department pursuant to 310 CMR 30.908(4), or a group of such facilities in Massachusetts, shall demonstrate assurance of financial

responsibility for bodily injury and property damage to third parties caused by each nonsudden accidental occurrence arising from operation of the facility(ies). The owner or operator of each facility shall give notice to the Department of every claim for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such notice to the Department as soon as possible and in any event no later than thirty (30) days after learning of such claim. The owner or operator of each facility shall give notice to the Department of every judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility. The owner or operator of each facility shall give such notice to the Department as soon as possible and in any event no later than thirty (30) days after learning of said judgment. The owner or operator of each facility shall submit to the Department a copy of every judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility. The owner or operator of each facility shall submit a copy of such judgment to the Department as soon as possible and in any event no later than thirty (30) days after receiving a copy thereof. Subject to the provisions of 310 CMR 30.908(3), (4), and (5), the owner or operator of each facility, or a group of such facilities in Massachusetts, shall have and continuously maintain coverage for nonsudden accidental occurrences in the amount of at least $3-million per each nonsudden accidental occurrence with an annual aggregate of at least $6-million, exclusive of legal defense costs. Subject to the provisions of 310 CMR 30.908(5), (6), and (7), the owner or operator of each facility, or a group of such facilities in Massachusetts, shall have and continuously maintain such coverage using the options specified in 310 CMR 30.908(2)(a) through (d).

(a) An owner or operator may demonstrate the required coverage by having liability insurance, as specified in 310 CMR 30.901(2) or (6), which conforms to 310 CMR 30.908(2)(a).

1. Each liability insurance policy shall include a Hazardous Waste Facility Liability Endorsement (the "endorsement") and may be evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in 310 CMR 30.909(6). The wording of the certificate of insurance shall be identical to the wording specified in 310 CMR 30.909(7). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of liability insurance to the Department. If requested by the

Department, the owner or operator shall provide a signed duplicate original of the liability insurance policy. An owner or operator of a facility shall submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department within the applicable period prescribed in 310 CMR 30.901(2) or (6).

2. At a minimum, the insurer shall be licensed to transact the business of insurance in Massachusetts, or authorized to provide insurance as an excess or surplus lines insurer in Massachusetts, or a risk retention group lawfully providing insurance to its members in Massachusetts.

(b) An owner or operator may demonstrate the required coverage by establishing a nonsudden accidental occurrence liability trust fund, as specified in 310 CMR 30.901(2) or (6), which conforms to 310 CMR 30.908(2)(b), and by sending an originally signed duplicate of the trust agreement to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The trustee shall be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by the Massachusetts Commissioner of Banking, or the trustee shall be a national bank.

2. The wording of the trust agreement shall be identical to the wording specified in 310 CMR 30.909(8)(a), and the trust agreement shall be accompanied by a formal certification of acknowledgement identical to the wording specified in 310 CMR 30.909(8)(b).

3. On the date of the initial establishment of the nonsudden accidental occurrence liability trust fund, the value of the fund shall be at least six million dollars ($6,000,000), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).

4. If an owner or operator substitutes other financial assurance as specified in 310 CMR 30.908(2) for all or part of the nonsudden accidental occurrence liability trust fund, he may submit a written request to the Department for release of the amount in excess of the amount to be covered by the nonsudden accidental occurrence liability trust fund.

5. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the nonsudden accidental occurrence liability trust fund in satisfaction of the judgment by submitting to the Department a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was

either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

6. After receiving the material described in 310 CMR 30.908(2)(b)5, the Department shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Department shall instruct the trustee to pay to the person who obtained the judgment such amounts, not to exceed the amount of the judgment, as the Department may specify in writing.

7. No trust shall be terminated without prior written consent of the Department. The Department may agree to termination of the trust when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(2), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(c) An owner or operator may demonstrate the required coverage by obtaining a surety bond which conforms to 310 CMR 30.908(2)(c) and by submitting the surety bond to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The surety company(ies) issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond shall be identical to the wording specified in 310 CMR 30.909(9).

3. An owner or operator who uses a surety bond to satisfy the requirements of 310 CMR 30.908 shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder shall, in accordance with instructions from the Department, either be paid by the surety directly to a person described in 310 CMR 30.908(2)(c)5 or deposited by the surety directly into the standby trust fund. This standby trust fund shall meet the requirements in 310 CMR 30.908(2)(b), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Department with the surety bond; and

b. Until the standby trust fund is funded pursuant to the requirements of 310 CMR 30.908, the following are not required: (i) payment into the trust fund as specified in 310 CMR 30.908(2)(b); (ii) annual valuations as required by the trust agreement [See 310 CMR 30.909(8)(a)(Section 10)]; and (iii) notices of nonpayment as required by the trust agreement [see 310 CMR 30.909(8)(a)(Section 15)].

4. Any person who obtains final judgment against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the surety bond in satisfaction of the judgment by submitting to the Department a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

5. After receiving the material described in 310 CMR 30.908(2)(c)4, the Department shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Department shall instruct the trustee to pay to the person who obtained the judgment such amounts, not to exceed the amount of the judgment, as the Department may specify in writing.

6. The bond shall guarantee that the owner or operator shall:

a. Fund the standby trust fund in an amount equal to either the sum of the judgment described in 310 CMR 30.908(2)(c)5 and the costs of administering said fund, or the amount of the penal sum, whichever is less, within fifteen (15) days after the Department or a court of competent jurisdiction issues an order to that effect; or

b. Provide alternate financial assurance as specified in 310 CMR 30.908, and obtain the

Department's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and by the Department of a notice of cancellation of the surety bond from the surety.

7. Under the terms of the bond [see 310 CMR 30.909(9)], the surety shall become liable on the bond obligation when the owner or operator does not perform as guaranteed by the bond [see 310 CMR 30.909(9)].

8. The penal sum of the bond shall be at least six million dollars ($6,000,000), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).

9. Under the terms of the bond, the surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not take effect, however, until at least one hundred twenty (120) days after the date of receipt of the notice of cancellation by both the owner or operator and the Department, as shown by the later return receipt.

10. No bond shall be cancelled without prior written consent of the Department. The Department may agree to cancellation of the bond when the Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(2), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(d) An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which conforms to 310 CMR 30.908(2)(d) and by submitting the letter to the Department within the applicable time period prescribed in 310 CMR 30.901(2) or (6).

1. The institution issuing the letter of credit shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Massachusetts Commissioner of Banking, or the institution shall be a national bank.

2. The wording of the letter of credit shall be identical to the wording specified in 310 CMR 30.909(10).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 310 CMR 30.908(2) shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Department, either be paid by the issuing institution directly to a person described in 310 CMR 30.908(2)(b)5 or deposited by the issuing institution directly into the standby trust fund. This standby

trust fund shall meet the requirements in 310 CMR 30.908(2)(b), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Department with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of 310 CMR 30.908, the following are not required: (i) payment into the trust fund as specified in 310 CMR 30.908(2)(b); (ii) annual valuations as required by the trust agreement [See 310 CMR 30.909(8)(a)(Section 10)]; and (iii) notices of nonpayment as required by the trust agreement [see 310 CMR 30.909(8)(a)(Section 15)].

4. The letter of credit shall be accompanied by a letter from the owner or operator which shall state:

a. The letter of credit number;

b. The name of the issuing institution;

c. The date of issuance of the letter of credit;

d. The EPA identification number(s) of the facility(ies);

e. The name(s) and address(es) of the facility(ies); and

f. The amount of funds assured by the letter of credit.

5. The letter of credit shall be irrevocable and shall be issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, no later than one hundred and twenty (120) days before the current expiration date pursuant to the terms of the letter of credit, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred and twenty (120) days shall not begin before the date when both the owner or operator and the Department have received the notice, as shown by the later return receipt.

6. The letter of credit shall be issued in an amount at least six million dollars ($6,000,000), or such other amount as required by the Department pursuant to 310 CMR 30.908(4) or (5).

7. If an owner or operator substitutes other financial assurance as specified in 310 CMR 30.908(2) for all or part of the amount of the letter of credit, he may submit a written request to the Department for release of the amount in excess of the amount to be covered by the letter of credit.

8. Any person who obtains final judgment against the owner or operator for bodily injury and/or property

damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment by submitting to the Department a certified copy of the judgment and a statement, signed subject to 310 CMR 30.006 and 30.009, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator.

9. After receiving the material described in 310 CMR 30.908(2)(d)8, the Department shall determine whether the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator. If so, the Department shall instruct the institution issuing the letter of credit to pay either to the person making the claim or into the standby trust fund, or the Department shall instruct the trustee of the standby trust fund, to pay to the person who obtained the judgment such amounts, not to exceed the amount of the judgment, as the Department may specify in writing.

10. If the owner or operator does not establish alternate financial assurance as required by 310 CMR 30.908(2) and does not obtain written approval from the Department of any such alternate financial assurance within ninety (90) days of receipt by both the owner or operator and by the Department of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section or has failed to obtain written approval by the Department of such assurance.

11. No letter of credit shall be terminated without prior written consent of the Department. The Department may return the letter of credit to the issuing institution for termination when the

Department is persuaded that the owner or operator has substituted alternate financial assurance as specified in 310 CMR 30.908(2), or when the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(3) Period of Coverage. Each owner or operator shall continuously provide all required liability coverage for each facility until the Department certifies closure of the facility pursuant to 310 CMR 30.099(6) or 30.586(2).

(4) Adjustments by the Department. If the Department determines that the amount of financial assurance required by 310 CMR 30.908(1) or (2) is not high enough to reflect the degree or duration of risk associated with treatment, storage, or disposal of hazardous waste at a particular facility, the Department may require that the amount of financial assurance be increased to reflect such risk. If the Department determines that there is a significant risk to human health or the environment from nonsudden accidental occurrences resulting from the operation of a facility that is not described in 310 CMR 30.901(1)(b), the Department may require that the owner or operator of such facility comply with 310 CMR 30.908(2). An owner or operator shall furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for adjusting the amount or type of financial assurance. Any adjustment of the amount or type of financial assurance for a facility which has a license shall be treated as a license modification pursuant to 310 CMR 30.800. Any adjustment of the amount or type of financial assurance for a facility having interim status pursuant to RCRA which does not have a license shall be treated as if it were a license modification pursuant to 310 CMR 30.800.

(5) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 310 CMR 30.908(1) and (2) by establishing more than one financial mechanism per Massachusetts facility. These mechanisms shall be limited to liability insurance, trust funds, surety bonds guaranteeing payment, and letters of credit. These mechanisms shall be in compliance with 310 CMR 30.908(1) and (2), except that it shall be a combination of mechanisms, rather than a single mechanism, which shall provide financial assurance for the amounts required pursuant to 310 CMR 30.908. If an owner or operator uses a trust fund in combination with any other mechanism, he shall use the trust fund as a standby trust fund for those mechanisms for which the establishment of a standby trust fund is required. A single standby trust fund may be used for two or more mechanisms. The Department may use any or all of the mechanisms to provide for financial assurance as required by 310 CMR 30.908.

(6) Use of a financial mechanism for multiple facilities
(a) An owner or operator may use a financial assurance mechanism specified in 310 CMR 30.908 to meet the requirements of 310 CMR 30.908 for more than one Massachusetts facility.
(b) Evidence of financial assurance submitted to the Department shall include a list showing, for each facility, the EPA identification number, name, address, and amount of funds assured by the mechanism.

(7) Use of a mechanism for assurance of financial responsibility for both sudden accidental occurrences and nonsudden accidental occurrences. An owner or operator may satisfy the requirements for assurance of financial responsibility for both sudden accidental occurrences and nonsudden accidental occurrences and for more than one facility by using liability insurance, a trust fund, a surety bond guaranteeing payment, or a letter of credit, or a combination thereof, which meets the specifications set forth in 310 CMR 30.908. The amount of funds available through the mechanism(s) shall be no less than the sum of funds that would be available if (a) separate mechanism(s) were to be established and required to be maintained.

(8) Payment of claims and judgments by other means. Nothing in 310 CMR 30.000 shall be construed to affect an owner's or operator's right or duty to use other financial mechanisms to satisfy or pay any claim or judgment for bodily injury and/or property damage caused by an accidental occurrence or occurrences arising from the operation of the facility.

5. Effective December 31, 1985 through March 31, 1986, 310 CMR 30.909 is hereby amended by inserting after subsection (7) the following subsections:-

(8) Trust Instruments for Financial Assurance for Accidental Occurrences.
(a) A trust agreement for a trust fund established pursuant to 310 CMR 30.908(1)(b), (c), or (d), or pursuant to 310 CMR 30.908(2)(b), (c), or (d), shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

TRUST AGREEMENT

This Trust Agreement, hereafter referred to as the "Agreement", is entered into as of [date] by and between [name of the owner of operator], a [name of State] [insert "corporation", "partnership", "association", "trust", or "individual"], hereafter referred to as

the "Grantor", and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], hereafter referred to as the "Trustee".

Whereas the Department of Environmental Quality Engineering, hereafter referred to as the "Department", an agency of the Commonwealth of Massachusetts, has established certain regulations applicable to the Grantor, requiring that the Grantor shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence and/or each nonsudden accidental occurrence arising from operation of the facility identified in Schedule A; and

Whereas, the Grantor has elected to establish a [insert either "trust fund" or "stand-by trust fund"] to demonstrate all or part of such financial responsibility for the facility identified in Schedule A; and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions..

(a) The term "Grantor" means [name of the owner or operator].
(b) The term "Trustee" means [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], and any successor thereof.
(c) The terms "Department" and "Beneficiary" mean the Department of Environmental Quality Engineering, an agency of the Commonwealth of Massachusetts, and any successor of the said Department.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on the attached Schedule A [on attached Schedule A list each facility, and for each facility list the EPA identification number, name, and address for which financial responsibility is demonstrated by this Agreement].

Section 3. Establishment of Trust Fund. The Grantor and the Trustee hereby establish a trust fund (the "Fund") for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in the attached Schedule B. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility, for the amount or adequacy of, nor any duty to collect from the Grantor, any

payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury and Property Damage to Third Parties. The Trustee shall make payments from the Fund as directed by the Department in writing. Said payments shall provide for payments from the Fund to the Department or to other persons, as specified in writing by the Department, for bodily injury and property damage caused by each sudden accidental occurrence and/or each nonsudden accidental occurrence arising from operation of the facility covered by this Agreement. Such payment(s) shall be in such amount(s) as the Department directs in writing. In addition, the Trustee shall refund to the Grantor such amount(s) as the Department specifies in writing. Upon payment or refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash, securities, or other assets acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the principle and income of the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any affiliates of the Grantor, as defined in the Investment Company Act of 1940, an amended, 14 U.S.C. §80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;
(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be

commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 14 U.S.C. §§80a-1 et. seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it by public or private sale;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other Fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, no later than December 1, furnish to the Grantor and to the Department a

occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or Department except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Department by certified mail by no later than February 10 if no payment into the Fund is received from the Grantor during the month of January.

Section 16. Amendment of Agreement. This Agreement may be amended by an instruction in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated by the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of the Trust, or in carrying out any directions by the Grantor or by the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Massachusetts.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not effect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above. The parties below certify that the wording of this Agreement is identical to the wording specified in 310 CMR 30.909(8)(a) as in effect on the date first written above.

[Signature of Grantor]
[Title]

statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no later than November 1. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may, from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the interpretation of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department, and the present Trustee by certified mail at least ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule C or such other designees as the Grantor may designate by amendment to Schedule C. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Commissioner or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or Department hereunder has

Attest:
[Title]
[Seal]

[Signature of Trustee]

Attest:
[Title]
[Seal]

(b) Each certification of acknowledgement which shall accompany a trust agreement for a trust fund as required by 310 CMR 30.908 and 30.909(8)(a) shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

State of [Name of State]

County of [Name of County]

On this [date], before me personally came [owner or operator] to me known, who being by me duly sworn, did depose and say that she/he [strike one] resides at [address], that she/he [strike one] is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he [strike one] knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he [strike one] signed her/his [strike one] name thereto by like order.

[Signature of Notary Public]

My Commission expires: [Date]

(9) Surety Bonds for Financial Assurance for Accidental Occurrences. A surety bond guaranteeing payment as specified in 310 CMR 30.908(1)(c) and 310 CMR 30.908(2)(c) shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

FINANCIAL GUARANTEE BOND

Date bond executed: [Date]

Effective date: [Date]

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "trust", "partnership" "corporation", or "association"]

State of incorporation: [Name of State]

Surety(ies): [name(s) and business address(es) (EPA Identification Number, name, address, and sudden accidental occurrence and/or nonsudden accidental occurrence amount(s) for each facility guaranteed by this bond (indicate sudden accidental occurrence and nonsudden accidental occurrence amounts separately)]:

Total penal sum of bond: $[Amount]

Surety's bond number: $[Number]

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Department of Environmental Quality Engineering of the Commonwealth of Massachusetts, hereinafter called the Department, in the above penal sum, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, pursuant to G.L. c. 21C and 310 CMR 30.000, to have a license or interim status in order to own or operate each facility identified above, and

Whereas said Principal is required, pursuant to 310 CMR 30.908, to demonstrate financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence, or each sudden accidental occurrence and each nonsudden accidental occurrence, as a condition of the license or interim status, and

Whereas the amount of such financial responsibility that must be demonstrated is $1-million per each sudden accidental occurrence with an annual aggregate of at least $2-million, exclusive of legal defense costs, and $3-million per each nonsudden accidental occurrence with an annual aggregate of at least $6-million, exclusive of legal defense costs.

NOW, THEREFORE, the condition of this obligation is such that if, while this bond is in effect, the Principal shall pay, up to the limits set forth above, for bodily injury and property damage caused by accidental occurrences arising from operation of any facility identified above, as set forth in 310 CMR 30.908, then this bond shall be null and void; otherwise it is to remain in full force and effect.

Or, if the Principal shall establish and fund the standby trust fund in such amount(s) within fifteen (15) days after the Department or a court of competent jurisdiction issues an order to do so.

Or, if the Principal shall provide alternate financial assurance, as specified in 310 CMR 30.908(1) or (2) as applicable.

and obtain the Department's written approval of such assurance, within ninety (90) days after receipt of notice of cancellation by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall fulfill this obligation. However, no liability shall attach to the Surety(ies) hereunder until the Principal or the Department notifies the Surety(ies) of a possible claim for bodily injury and/or property damage caused by accidental occurrences arising from operation of the facility(ies) identified above. Such notice shall automatically extend, for a period of six years, the obligation of the Surety(ies) to pay for bodily injury and property damage caused by such accidental occurrences prior to the date upon which this Surety Bond would otherwise have been terminated.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

The Surety(ies) shall become liable on this bond obligation only for amounts for which it (they) has (have) been presented a final judgment against the Principal for bodily injury and/or property damage caused by an accidental occurrence or occurrences arising from the operation of the facility(ies) identified above. Said judgment shall have been either (1) rendered by the highest court in the jurisdiction where the action was brought and the Principal exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by Principal to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the Principal.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Department, provided, however, that cancellation shall not take effect until at least one hundred and twenty (120) days after the date of receipt of the notice of cancellation by both the Principal and the Department, as shown by the later return receipt, and provided further that such notice shall not discharge any obligations of the Surety(ies) hereunder which may have arisen prior to the receipt of such notice.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall

become effective until the Surety(ies) receive(s) written authorization by the Department for termination of the bond.

[The following paragraph is an optional rider that may be included but is not required].

The Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount of financial responsibility for bodily injury and property damage to third parties caused by accidental occurrences, provided that the penal sum does not increase by more than 20% in any one year, and no decrease in the penal sum takes place without the written approval of the Department.

In witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The individuals whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 310 CMR 30.909(9) as in effect on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name(s) and address(es)]

State of incorporation _____[Name of State]_____

Liability limit: $_____[Amount]_____

[Signature(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for the Surety above.]

Bond premium: $_____[Amount]_____

(10) Letters of Credit for Financial Assurance for Accidental Occurrences. A letter of credit as specified in 310 CMR 30.908(1)(d) and 310 CMR 30.908(2)(d) shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

Commissioner,
Department of Environmental Quality Engineering
Commonwealth of Massachusetts

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [Number] in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars ($ [Amount]), available upon presentation, by you or your designee, of

(1) Your or your designee's sight draft, bearing reference to this letter of credit No. [Number], and

(2) Your or your designee's signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to 310 CMR 30.908 and 30.909, regulations issued under authority of Massachusetts General Laws, Chapter 21C."

This letter of credit is effective as of [date] and shall expire on [date at least one (1) year later], but such expiration date shall be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date, unless, at least one hundred and twenty (120) days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your or your designee's sight draft within one hundred and twenty (120) days after the date of receipt of notification by both you and [owner's or operator's name], as shown on the later of the signed return receipts.

Whenever this letter or credit is drawn on, under, and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall pay the amount of the draft in accordance with your or your designee's instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 310 CMR 30.909(10) as in effect on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce", or "the Uniform Commercial Code"]

6. Effective on and after April 1, 1986, 310 CMR 30.901, 30.908, and 30.909 shall read as they were in effect on December 30, 1985.

** non-text page **

Interim Recycling Regulations

Before the issuance of recycing regulations in the EPA final rule of January 4, 1985, the Massachusetts' regulations on recycling were less stringent than the federal regulations with regard to listed wastes and sludges. These regulations provide an interim provision that removed this discrepancy pending the adoption by Massachusetts of regulations which implement the rule of January 4th. These regulations were issued as emergency regulations on December 31, 1985 and are intended to remain in effect until they are superceded by the recycling regulations described elsewhere in this discussion paper, or until July 1, 1986, whichever comes sooner.

** non-text page **

310 CMR: DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING

1. 310 CMR 30.099(12)(b) is hereby amended by striking out the words "January 4, 1986" and inserting in place thereof the words:- July 1, 1986.

2. 310 CMR 30.099(12)(c) is hereby amended by striking out the words "January 4, 1986" and inserting in place thereof the words:- July 1, 1986.

** non-text page **

Research, Development and Demonstration Permit Approvals

Among the 1984 Amendments to RCRA (now known as the Solid Waste Disposal Act) was a directive to EPA to establish a procedure to grant permits of limited extent and duration to facilities that wished to do research, and development of, or demonstrate pilot versions of, treatment systems that used new technology. These permits were to have less stringency than the ordinary treatment license, and be less onerous to obtain, on the grounds that much smaller quantities of wastes would be managed.

It is, of course, not necessary to have a permit to conduct the original research on a treatment process because this involves the chemical transformation or detoxification, or other treatment, of mixtures of chemical reagents. At some stage, however, it is necessary to try out the process on actual process wastes to determine whether some trace impurity, present in the waste but not in the reagent mixture, may have an effect on the process. In order to obtain samples of actual wastes for treatment the research and development laboratory or pilot plant must be licensed or permitted to receive hazardous wastes shipped on a hazardous waste manifest.

Because there are presently several candidates for such permits actively engaged in research and development in Massachusetts, the department has been actively seeking ways to facilitate this activity. However, because of the department's final authorization from EPA to enforce the federal hazardous waste program, Massachusetts' regulations have to be "at least as stringent as" the federal regulations. EPA, however, has not yet adopted regulations on RD&D permits, but instead intends to issue permits on a case-by-case basis.

Accordingly, the department proposes to honor permits issued by EPA as long as they are consistent with those Massachusetts regulations that are more stringent than federal regulations. These regulations, issued as emergency regulations on December 31, 1985, provide a procedure for issuing that approval.

** non-text page **

310 CMR: DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING

1. 310 CMR 30.305 is hereby amended by inserting after subsection (3) the following subsection:-

(4) A facility having at that time a research, development, and/or demonstration permit issued by the EPA pursuant to Section 3005(g) of RCRA.

(a) If the facility is located in Massachusetts, the facility shall also at that time be approved by the Department pursuant to 310 CMR 30.862, and the hazardous waste delivered to the facility shall be handled in full compliance with 310 CMR 30.000 prior to its delivery to the facility.

(b) If the facility is located outside of Massachusetts, the facility shall at that time be lawfully in existence pursuant to laws and regulations in effect in the place where the facility is located, and the hazardous waste delivered to the facility shall be handled in full compliance with 310 CMR 30.000 prior to its delivery to the facility.

2. 310 CMR 30.801 is hereby amended by inserting after subsection (12) the following subsection:-

(13) The operation of a research, development, and/or demonstration facility having a valid permit issued by the EPA pursuant to Section 3005(g) of RCRA and a valid approva issued by the Department pursuant to 310 CMR 30.862, provided that the facility is operated in full compliance with the terms and conditions of the permit issued by the EPA, the approval issued by the Department, and all applicable provisions of 310 CMR 30.000.

3. 310 CMR 30.800 is hereby further amended by inserting after 310 CMR 30.861 the following section:-

<u>30.862: Research, Development, and Demonstration Facilities and Approvals</u>

(1) The Department may issue a research, development, and/or demonstration approval for any hazardous waste facility which proposes to utilize an innovative and experimental hazardous waste technology or process for which standards have not been promulgated. Each such approval, and each application for such approval, shall be in writing and shall be subject to the provisions set forth in 310 CMR 30.801 through 30.803, 30.806, 30.807, 30.810 through 30.822, 30.825(2), (3), and (5), 30.831(1), (2), and (3), 30.853, 30.854, 30.870, 30.880, 30.890, and this section, and shall not be subject to any other provision of 310 CMR 30.800.

(2) The Department shall not issue a research, development, and/or demonstration approval, or allow any such approval to remain in effect, for any hazardous waste facility which does not have a research, development, and/or demonstration permit issued by the EPA pursuant to Section 3005(g) of RCRA. Each research, development, and/or demonstration approval issued by the Department pursuant to this section shall be subject to any terms and conditions reasonably imposed by the Department, which terms and conditions shall be at least as stringent as those imposed by the EPA.

(3) No research, development, and/or demonstration facility subject to this section shall be operated without the prior issuance of an approval issued by the Department pursuant to this section. No research, development, and/or demonstration facility subject to this section shall be operated except in accordance with this section, all other applicable provisions of 310 CMR 30.000, and the terms and conditions of an approval issued by the Department pursuant to this section.

(4) All hazardous waste delivered to a research, development, and/or demonstration facility shall be handled in full compliance with this section and all other applicable provisions of 310 CMR 30.000.

REGULATORY AUTHORITY:

310 CMR 30.00; M.G.L. c. 21C, s 4 & 6.

PART 2

REGULATIONS FOR THE MANAGEMENT OF RECYCLED MATERIALS THAT WOULD BE HAZARDOUS WASTES IF DISPOSED OF.

** non-text page **

Introduction

On January 4 and November 29, 1985, the United States Environmental Protection Agency [the "EPA"] introduced the final rules governing the management of wastes which are hazardous wastes if disposed of, but which are recycled instead of being disposed of. Under the conditions of the EPA's final authorization to Massachusetts to operate a hazardous waste regulatory program in lieu of the Federal program pursuant to the Solid Waste Disposal Act (commonly known as "RCRA"), Massachusetts is required to implement regulations that are at least as stringent as the Federal regulations. The normal deadline for that implementation would be January 4, 1986, but due to mitigating circumstances, the Regional Administrator of EPA's Region 1 has given Massachusetts an extension of six months. DEQE is therefore proposing to implement the regulations discussed below by July 1, 1986.

The regulations currently proposed were circulated to interested parties in substantially similar form on October 23, 1985. In order to include the effects of the November 29, 1985 EPA rules, which would have impacted regulations proposed by DEQE last year, but not adopted, concerning the burning of waste oils for energy recovery, the form of the proposed recycling regulations has been considerably changed. The contents of the proposed regulations are not substantially changed, except for the incorporation of the waste oil regulations. The revision has permitted certain economies in presentation. In particular, all the regulations dealing with recycling are now relocated in a revised 310 CMR 30.200, and the interim waste oil regulations formerly in 310 CMR 30.200 through 30.202 are incorporated.

Background

Once a hazardous waste is generated, something has to be done with it. The usual procedure is to dispose of it by either burying it in a landfill or by treating it and then releasing it and its residue to the atmosphere or waters. Disposal has a social cost to the community and a direct cost to the generator of the waste. The generator's costs include the costs of management at his own site, the cost of transportation, and the cost of disposal or treatment at a hazardous waste facility.

If, however a hazardous waste can be recycled, both the generator's costs and the social costs can be reduced or eliminated. If used as a substitute for a feedstock or commercial material, the hazardous waste will be processed so that no hazards result to the public or the environment, and it will have an economic value to the user so that the generator may be able to sell or transfer it at a reduced cost. This

positive value or reduced cost to the generator will make illegal disposal a less tempting alternative to the generator, and careless management less likely.

It is, therefore, to the advantage of the community to encourage recycling whenever that can be done without creating potential hazards to the public health and the environment. This can be done by making recycled wastes subject to less onerous regulations than the regulations applied to wastes destined for disposal or other handling other than recycling.

It should be noted that recycling involves the reuse after processing of a material which is substituted for a virgin material. It will only be done if the cost of that reuse - including the cost of reprocessing and the cost of management in compliance with government regulations - is competitive with the cost of the virgin material. It is therefore desirable to minimize the cost of regulatory compliance (consistent with protecting public health and safety and the environment) if recycling is to be encouraged.

At the same time, recycling regulations must take into account the fact that lawful disposal of hazardous waste is expensive, and that some persons might try to avoid these expenses by engaging in sham recycling which is actually disguised treatment or disposal processes operating under reduced regulation. Such sham recycling, if not prevented, could endanger public health and safety and the environment.

It is therefore the Department's intent to regulate recycling with sufficient stringency to prevent sham recycling and other practices that are hazardous to public health, safety and welfare, and the environment; but not with such stringency as to discourage recycling.

Theories of Intermediate Levels of Regulation

The hazardous waste regulations, 310 CMR 30.000, currently provide for certain types of recycling which are regulated with less stringency than the equivalent form of hazardous waste treatment prior to disposal. These regulations set conditions for reuse, combustion as fuel, and other types of recycling conducted both on and off the site of generation. In each of these cases, DEQE thought that, because the recycled material is, or is a substitute for, a feedstock or a commercial material, the recycled material is not a "waste" as long as it is properly recycled, i.e. in compliance with the regulations. In this way only the specific regulations, and not the rest of the regulations governing hazardous wastes, would apply to those materials. This allowed the imposition of regulations which suited the individual kinds of recycling and protected

public health and safety and the environment, but did not have the stringency of full hazardous waste regulation.

The EPA approached recycling in a different way. EPA thought that its authority to regulate the handling of hazardous waste included regulating the generation and the transportation of hazardous waste intended to be recycled, and its storage or accumulation, prior to recycling, but not the act of recycling per se. In order to assert its authority over the material being recycled, EPA asserted that, for purposes of Subtitle C of RCRA, a recycled material was a "solid waste". EPA then went on to declare that some particular kinds of recycled material are, despite the definition, "not a solid waste" and thus totally exempt from regulation.

This obviously does not mesh well with the Massachusetts approach to regulating recycling. Material which is "solid waste" with respect to Subtitle C of RCRA would not be "hazardous waste" with respect to M.G.L. c. 21C if handled in compliance with DEQE recycling regulations. While this is not a legal contradiction, it is confusing to the regulated community and even more so to the general public.

In order to maintain its final authorization for the hazardous waste program, Massachusetts must, by July 1, 1986, adopt a procedure for regulating recycling that is "at least as stringent" as the Federal rule. DEQE has no difficulty with the intent or the substance of the Federal rules; but, as noted, there is some difficulty with the language.

DEQE can reach the results reached by the Federal rules by shifting the theoretical basis for the reduced degree of regulation of materials that are being recycled. Massachusetts General Laws, Chapter 21C, §4 says in part:

> The responsibilities of the Department shall include the developing and establishing of . . . provisions for waiver by the Department for any waste which the Department determines is insignificant as a potential hazard to the public health, safety, welfare or the environment. . . .

Therefore, DEQE has the legal authority to establish standards for recyclable hazardous wastes in such a way that:

(1) If they are recycled in compliance with proper standards and a permit from the Department, and so do not constitute a significant potential hazard to the public health, safety, or welfare, or the environment, the remaining regulatory conditions of 310 CMR 30.000 do not apply; and

(2) If they are <u>not</u> recycled in accordance with proper standards and the conditions of a permit issued by the Department, and thus constitute a significant potential hazard to the public health, safety, or welfare, or the environment, they are subject to all the provisions of 310 CMR 30.000.

The same sentence of G. L. c. 21C, §4 requires that these standards be "consistent with regulations promulgated under RCRA". Therefore, State as well as Federal law requires DEQE to make its hazardous waste recycling standards "at least as stringent as" the Federal rule of January 4, 1985. With regard to language, and whether these materials are, or are not, "wastes", it should be understood that the materials handled in compliance with the less stringent recycling regulations are referred to in the proposed regulations as "regulated recyclable materials". Such materials are "hazardous wastes", and must be managed as "hazardous wastes" in compliance with 310 CMR 30.000, if they constitute a potential hazard to the public health, safety, or welfare, or the environment, by being recycled improperly, i.e. in noncompliance with the recycling regulations.

DEQE does not propose to use the Federal approach of saying that some of these materials are not "solid wastes" and therefore exempt from any kind of regulation. All of the recyclable materials covered by these regulations are hazardous wastes if not recycled. DEQE thus requires all these materials to be recycled in compliance with a permit from the DEQE, even if some of the least restrictive of these permits will amount simply to not much more than a notification that the recycling is being done. By regulating these materials in this way, the DEQE is prepared to assert authority over any of these materials if they are improperly managed.

<u>Outline of Regulatory Procedure</u>

The Massachusetts procedure for regulating recyclable material begins by defining a "regulated recyclable material" as a material that (1) would be a hazardous waste if it were not recycled, i.e. a material that is listed as, or has the characteristics of, a hazardous waste and (2), if not recycled, would be discarded, abandoned, burned or incinerated, or have an inherently waste-like character (at this point, the only material that the EPA says is inherently waste-like is dioxin process wastes).

Recyclable materials are further divided into three classes.

Class A recyclable materials are those which, for one reason or another, DEQE thinks require minimum regulation. Permits for

recycling Class A recyclable materials will generally amount to a confirmation that the recycling is occurring and only in special cases will the Department expect to add more stringent conditions to the permit than those in the regulations. In that way all Class A permits will be essentially identical.

Class B recyclable materials are those for which the EPA has established particular management standards or conditions. These include: materials used in a manner constituting disposal, those burned for energy recovery but not in a licensed incinerator, used oils (which EPA regulates in the November 29, 1985 rules), materials having a recoverable content of precious metals, and spent lead-acid batteries that are reclaimed to recover the lead. Each of these sub-classes of recyclable material will have its own particular set of conditions suiting the traditional management procedures for industrial processing or use of those materials.

Class C recyclable materials are all recyclable materials that are neither Class A nor Class B. They will generally be managed in the same way as hazardous wastes are now regulated in 310 CMR 30.000 with two exceptions that were not previously reflected in Massachusetts recycling regulations.

The first exception is that recyclers of Class C materials who store the material before recycling it will have to have an off-site storage permit, i.e. a facility license pursuant to 310 CMR 30.500 through 30.900. Those who do not store before recycling are not required to have a facility license. Instead, conditions will be applied in the recycling permit that will assure that the recycling process is not a significant potential hazard to the public health, safety, and welfare and the environment. While this opens the possibility for a less stringently regulated facility than was previously possible in Massachusetts, it is (1) consistent with DEQE's intent to encourage recycling in a proper manner, and (2) consistent with, and more stringent than, Federal regulation. Not to offer this possibility would be to place Massachusetts generators of recyclable materials in a competitive position inferior to that of generators in other States without providing any increased protection for the public health or safety or the environment.

The second exception would be that recycling at the site of generation would be less likely to deemed an "integral part of a manufacturing process" and would more likely be subject to a recycling permit with conditions that could be suited to the particular recycling process. This will encourage waste minimization (otherwise known as "source reduction") while giving DEQE more flexibility in applying detailed regulation to those processes which might otherwise be hazardous. This

change also brings the Massachusetts pattern of regulation into greater consistency with Federal regulation while maintaining the greater stringency required by G. L. c. 21C.

Note that completely enclosed recycling systems at the site of generation, now classified as an "integral part of a manufacturing process at the point of generation" and therefore exempt from regulation, would be subject to a Class A recycling permit under these proposed regulations.

This procedure is augmented by new definitions of "waste", "discarded material", "inherently waste like materials", "recycled materials", "used or reused materials", "reclaimed materials", "spent materials", "by-products", and "scrap metal". These definitions are consistent with the Federal definitions of these terms and will serve to clarify the status of the various kinds of recycled materials and hazardous wastes. These definitions allow each such material to be identified as a waste or a recycled material in terms of the activities of its particular source, rather than in terms of conventional practice in an industry as a whole (as is now implied in the present definition of "waste").

One new definition, that of "speculative accumulation", will further clarify the distinction between accumulation for purposes of recycling and sham recycling that is actually unlicensed storage. A generator or recycler who accumulates for purposes of recycling must actually recycle at least 75% of the amount accumulated in the course of a year or he will be held to the regulations governing storage of hazardous wastes. Since several superfund sites were sham recyclers, it is important to have a consistent standard like this that can be generally employed.

The procedure for regulating recycling will center around the issuance of permits for recycling the various classes of materials. Class A materials will be regulated by section 30.220. Class B(1) materials, those used in a manner constituting disposal, are regulated in section 30.230. Class B(2) materials, the hazardous waste fuels that are recycled for energy recovery, are regulated in section 30.240. Class B(3) materials, used oils that are burned for energy recovery (it should be noted that some used oil fuels are regulated not by class B(3) permits but by Class A permits), are regulated in sections 30.250 through 30.269. Class B(4) materials, those that contain precious metals, are regulated by section 30.270. Spent lead-acid batteries, which are Class B(5) materials, are regulated by section 30.280. Class C materials are regulated by section 30.290.

The general conditions for recycling all materials requiring a a permit are given in 310 CMR 30.201 through 30.209. The

procedure for classification of recyclable material is set forth in 310.CMR 30.210.

In general, the regulations are intended to (1) assure that hazardous wastes which are recyclable materials are managed so that they do not constitute a significant potential hazard to the public health, safety, or welfare, or the environment (2) be at least as stringent as the Federal regulations, and (3) not be so stringent as to unnecessarily discourage recycling. Where there is a conflict between the third of these intents and either of the first two, the first two must prevail.

Special Note on Waste Oil

Waste oil plays an anomalous part in both State and Federal regulations. It has been a hazardous waste under Massachusetts regulations since 1973, but it is not yet a hazardous waste under Federal regulations (although there is now a proposal to that effect). It is widely recognized that waste oil is a potential hazard to the public health, safety, and welfare, and the environment, but the special circumstances under which it is managed has mitigated against strenuous enforcement of stringent regulations.

Waste oil is the largest waste stream in Massachusetts that is reported on hazardous waste manifests. There is an additional quantity that is not manifested but reported on transporters' logs. In addition, a substantial quantity of waste oil is exempt from most of 310 CMR 30.000 because it comes from do-it-yourself changers of automobile crankcase and is therefore either household waste or waste generated in insignificant quantities. Even that waste oil which is managed under 310 CMR 30.000 comes, in significant part, from small quantity generators, many of them independent gasoline stations.

The large number of small generators has made it ineffective for DEQE to strenuously enforce stringent regulations. As a consequence, the community of generators of generators of waste oil is not convinced that any noncompliance with any regulation governing waste oil will be detected or seriously penalized. Unlike generators of other hazardous wastes, a substantial fraction of the waste oil community might think that illegal disposal (e.g. dumping the waste oil on the ground or into a sewer system) is a practical alternative to compliance. The Commonwealth would have to expend considerable resources to establish an enforcement atmosphere sufficient to convince the waste oil community that illegal disposal is not a practical alternative to compliance.

In the recent past, this has not been necessary because the price of crude oil has been maintained at a higher than natural

level by limits on the production of virgin oil produced by nations in the Organization of Petroleum Exporting Countries ["OPEC"]. One result of OPEC's actions was to allow the development of an industry that purchased waste oil from generators and resold the oil to large users such as greenhouses and asphalt batching plants. As long as the price of virgin oil was high (e.g. $1.00 per gallon), entrepreneurs could buy used oil at 10-20¢ per gallon and resell it at 80¢ per gallon and make enough gross income to support a business.

As hazardous waste regulations have become more stringent, the costs of these waste oil operations have increased. Because marketers of waste oil store waste oil off the site of generation, they have had to meet stringent hazardous waste facility regulations. One of these is demonstrating financial responsibility for accidental occurrences. Recently, insurance for this purpose ceased to be available, or was made available only at prices several times what they were a year or two ago.

In the meantime, OPEC's control over oil production has weakened, and the over-all market demand for oil has decreased. The result has been a decline in the price of virgin oil. In January 1986 it was reported that bulk no. 6 fuel oil could be obtained for 50¢ per gallon. In order for used oil fuel to be competitive, it would have to sell to users for 30-40¢ per gallon. There is no way that entrepreneurs can now buy used oil fuel from generators at a price that is high enough to be attractive to generators and low enough to allow them to operate profitably.

The result is that generators who used to receive money for their waste oil will no longer receive money for it and may even have to pay money in order to get rid of it legally. Some generators might think it is practical to avoid paying such costs by illegally dumping their waste oil.

Nothing in these proposed regulations addresses this problem. Classifying some waste oil as "specification used oil fuel" which can be managed as any other fuel oil will offer some regulatory relief to some members of the waste oil community. However, this will not necessarily help marketers who will have to absorb the cost of testing the oil to see if it meets specifications, and definitely will not help those whose waste oil does not meet specifications.

In any event, whether or not the proposed regulations will offer sufficient regulatory relief to keep the waste oil industry viable, they represent the least stringent regulations that are consistent with Federal regulations and with DEQE's responsibility to assure that waste oil will be managed in such a way that is not a potential hazard to public health, safety, or welfare, or the environment.

Discussion of the individual amendments or additions to the regulations

310 CMR 30.010 Definitions

This is a very important part of the amendment package because the January 4, 1985 Federal rules include a revised definition of solid waste. This definition removes one of the numerous difficulties in determining whether a material is a hazardous waste in that it no longer requires a generator to be aware if a material is discarded by other generators. In addition to doing that, it adds to the category of hazardous wastes a number of materials that were formerly exempt, either because it was not felt that they needed to be regulated, as in the case of spent precious metal plating solution, or because the materials were not "wastes" in that they were used as feedstocks or products in their own right. The Federal rule now takes into account that some of those materials may be subject to "sham" operations which are actually disposal, and thus should be regulated, although the operators would claim that what they are doing is something other than waste treatment or disposal.

The approach presently used in Massachusetts to control sham situations has been to specify a limited number of scenarios, and then to define materials recycled under those scenarios as not "wastes". The presumption has been that a material which is recycled has a positive economic value to the recycler and will, therefore, not be managed in such a way as to be a significant potential hazard to the public health, safety, and welfare, and the environment. Any such material is no more "significant" a potential hazard than any virgin material.

Note that recycled hazardous wastes are hazardous materials and are therefore subject to regulation pursuant to G. L. c. 21E as well as G. L. c. 21C.

As long as Massachusetts retains the device of a recycling permit to control the possibility of a sham operation, it is not necessary for the regulations to define properly managed recycled materials as "wastes". To meet the need of encouraging recycling while preventing sham operation, these proposed amendments create a new category of materials: "regulated recyclable materials". These are materials that, when properly recycled, are not "wastes" in the full sense of G. L. c. 21C and can therefore be put outside the scope of some of the provisions of 310 CMR 30.000; but, when improperly recycled (e.g., in a sham operation) are "wastes" subject to the full requirements of 310 CMR 30.000 and G. L. c. 21C.

The method DEQE proposes to use to distinguish proper recycling from a sham operation is compliance with a recycling permit

issued by DEQE. Such a permit would contain such conditions as are needed to protect public health, safety, and welfare and the environment. EPA, however, does not feel that it has the authority to regulate recycling by the issuance of such permits, so such conditions as EPA feels are necessary to protect human health and the environment are imposed by defining recyclable material as "waste" (for purposes of Subtitle C of RCRA) and putting the conditions into the regulations imposing requirements on managing those "wastes". In order to be sure that, under all circumstances, the Massachusetts regulations are at least as stringent as the Federal regulations, certain conditions on the recycling operation have to be written in the form of regulations. Other conditions that the Department thinks are required by the individual case can be written as conditions on the particular recycling permit.

Thus, these new DEQE recycling regulations have to include three types of changes from the previous DEQE recycling regulations: definitions that include new or changed Federal definitions, including the definition of a regulated recyclable material; regulations that establish procedures for granting recycling permits; and the baseline conditions that are required by Federal rule for management of certain materials when recycled.

The following definitions would be deleted from 310 CMR 30.010:

End-user
recycle
reuse
user
waste

The definition of "use" would be retained, but would be termed "use constituting disposal".

New definitions would be added to 310 CMR 30.010 for:

Regulated recyclable material
Waste
Discarded Material
inherently waste like material
recycled material
used or reused material
reclaimed material
spent material
by-products
scrap metal
speculative accumulation
boiler

industrial boiler
utility boiler
completely enclosed recycling system

Regulated recyclable material would be defined in terms of three classes.

Class A recyclable material would be that material which, if not recycled, would be regulated under 310 CMR 30.000 as a hazardous waste, but which is specifically exempted or specifically not regulated under the January 4 or November 29, 1985 Federal rules. The intent is to apply minimal conditions to these recycling processes as long as they are not sham recycling.

Class B recyclable material would be that material for which specific management procedures have been set up in the Federal rules. These will include any material recycled in certain ways (e.g. a use constituting disposal), and specific materials recycled in any way (e.g. wastes containing precious metals).

Class C recyclable materials would be any recyclable material that is neither Class A nor Class B. Generation and transport of such material would be regulated like hazardous wastes, but recycling of such material would be stringently regulated only with respect to storage before recycling.

310 CMR 30.099 Transitional Provisions

310 CMR 30.099(12), which modifies the old Massachusetts recycling scenarios to exclude listed wastes and sludges, would be deleted.

310 CMR 30.100 Identification and listing of Hazardous Wastes

310 CMR 30.141 would be amended by deleting those provisions which say when a recycled material is not a hazardous waste.

310 CMR 30.143 would be revised to refer to 310 CMR 30.200 when hazardous wastes are recycled.

310 CMR 30.300 Requirements for Generators of Hazardous Wastes

310 CMR 30.355, 30.356 and 30.381 through 30.385 would be deleted. They defined the scenarios and requirements under the old Massachusetts approach to the regulation of recycling.

310 CMR 30.380 would be revised to refer to the generator standards for recycling that are contained in 310 CMR 30.200.

310 CMR 30.450 Requirements for the Transports of Regulated Recyclable Materials.

This section would be added to refer to the transporter standards in 310 CMR 30.200.

310 CMR 30.200 Provisions For Recyclable Materials

This major portion of the regulations would be revised by replacing the interim provisions for waste oil with all the proposed new regulations for recycling. Waste oil which is to be recycled by burning would be regulated in 310 CMR 30.200. Waste oil that would not be recycled would be treated no differently than any other hazardous waste.

310 CMR 30.201 Applicability

This section states that the regulations in 30.200 apply to materials that would be hazardous wastes when disposed of; and that the waiver of all other provisions in 30.000 are authorized by M.G.L. c. 21C.

310 CMR 30.202 Other Applicable Provisions

This section provides that sections 30.001 through 30.064 and 30.100 through 30.199 are applicable, and the remainder of 310 CMR 30.000 are not applicable, to recycled materials unless specifically mentioned; except that the materials are subject to all provisions of 310 CMR 30.000 if not managed in compliance with 310 CMR 30.200 and the conditions of the permit.

310 CMR 30.203 Signatories

This specifies who shall sign for an applicant.

310 CMR 30.204 General Conditions

This section would compile some general conditions specific to recycling that must be met by all permittees, such as reporting releases, recycling in the way described in the application, managing hazardous wastes properly, and transporting in compliance with DOT regulations when a manifest is not required.

310 CMR 30.205 Requirements for Applications For Recycling Permits

This section would specify the information that must be provided in all applications for recycling permits, such as the applicant's name, the material to be recycled, and the process to be used. This would be supplemented elsewhere with requirements for additional information to be provided for each class of permit.

310 CMR 30.206 General Conditions for All Recycling Permits

This section would collect general conditions applicable to all recycling permits, e.g. that the material must not be released into the environment, that it must be recycled in the way described in the application, that all hazardous wastes managed by the recycler must be managed in compliance with 310 CMR 30.000, and that unless otherwise specified the recyclable material must be transported in compliance with State and Federal regulations for the transport of hazardous material.

310 CMR 30.210 Classification of Regulated Recyclable Materials

This section contains the proposed definition of a regulated recyclable material and the procedures whereby the class of the materials would be determined.

310 CMR 30.220 Permits for Recycling Class A Materials

This section deals with the Class A permits, which are generally the simplest to apply for and obtain. In addition to the basic information, generators and recyclers of materials which are transported for recycling must refer to the other parties in the transaction, and those dealing with out-of-State persons must get a statement that the activity is lawful in the State in which it would occur. Recyclers who burn used oil in Massachusetts must also get an approval from DEQE's Division of Air Quality.

The conditions of Class A permits require that the generators and recyclers give some thought too the management of the materials, citing the requirements for treatment facilities in general form. DEQE reserves the right to add more stringent conditions when required by the quantity or hazardousness of the material being recycled.

310 CMR 30.230 Permits for Class B Recyclable Materials

310 CMR 30.230 through 30.280 deal with the particular standards required in order to safely manage Class B recyclable materials.

310 CMR 30.231 Class B(1)

This section deals with materials that are used in a way constituting disposal, i.e. by a means involving a release into the environment. This will generally require a license pursuant to 310 CMR 30.800, such as that for a land treatment facility, except for the specific case of a commercial chemical ordinarily used on the land. The permit for that particular case is subject to the provisions of 310 CMR 30.232.

310 CMR 30.240 Concerning Class B(2) Hazardous Waste Fuel

Mixtures of hazardous wastes and other fuels may be burned in industrial and utility boilers and industrial furnaces (except for cement kilns in populous areas) but they must be managed as hazardous wastes. This section contains specific requirements of the Federal final rule of November 29, 1985, dealing with notification to EPA, DEQE, and burners or marketers who deal with each other, and of the maintenance of relevant records. Those receiving hazardous waste fuels from off the site of generation must be licensed. Those storing hazardous waste fuels on the site of generation must be either licensed or interim status facilities. Generators who accumulate but do not store hazardous waste fuel, and who burn hazardous waste fuel on the site of generation, may burn hazardous waste fuels with a Class B(2) recycling permit and an approval from DEQE's Division of Air Quality Control.

310 CMR 30.250 Concerning Class B(3) Used Oil Fuel

This section is intended to encompass the interim standards for waste oil (formerly in 310 CMR 30.200), the regulations on burning used oil fuel proposed in the summer of 1985 by DEQE, and the references to used oil in the January 4, 1985 and November 29, 1985 Federal rules. DEQE hopes these will also anticipate the Federal rules proposed by EPA to be adopted later in 1986.

The universe of "waste oil" is divided into "used oil fuel" which is burned for energy recovery, "unused oil" which is not regulated if of commercially marketable form, and the remainder, which is a hazardous waste if disposed of. "Used oil fuel" is further divided by a specification, given in Table 30.250. Used oil fuel which meets the specification is regulated as a Class A material, while off specification used oil fuel has to be managed in much the same way as a hazardous waste fuel. Some of the provisions for recycling used oil which differ from recycling other material are:

> Waste oil may be collected by a licensed transporter using a log instead of a manifest if it is collected from small quantity generators of used oil only. This is intended to be an interim provision, with the logs being phased out in a year or so. Small quantity generators of used oil only do not have an EPA identification number, but if they do have a number they will be required to manifest.
>
> If the used oil fuel can be characterized at the site of generation as being specification used oil fuel, it can be transported by a common carrier. The person making the claim that it is specification used oil fuel must document

the evidence for the claim, and maintain records of the documentation.

Marketers of used oil fuels will be allowed to blend used oil with other fuels to meet the specifications, but they must have a license as a treatment facility in order to do so. Marketers who deal only in specification used oil fuel and who do not blend to meet the specifications may do so if they have a Class B(3) recycling permit.

Persons who market used oil fuel directly to a burner (including generators) must have a Class B(3) recycling permit even if only specification used oil fuel is involved.

Persons who burn used oil fuel (except those who burn the fuel in space heaters) must have a Class B(3) recycling permit if off-specification used oil fuel is burned.

The key provision in this regulation is the concept of "specification used oil fuel" derived from the Federal rule. If waste oil can be characterized as specification used oil fuel at the source, it can be managed with a minimum of further regulation. If that is not possible, transport to a licensed used oil facility and blending to meet specifications is the next preferable alternative.

Blending is not an economic alternative with hazardous waste fuels because any mixing merely makes the mixture a hazardous waste fuel. This affects used oils because used oils having more than 1,000 ppm of halogens are presumed to be hazardous waste fuels unless it can be demonstrated that they do not contain hazardous constituents in significant amounts (usually 100 ppm). The testing to document this will be economically prohibitive in most cases. Blending used oils mixed with halogens at a facility licensed to manage only waste oils would be thus be a violation of G. L. c. 21C and subject to severe penalties.

Off-specification used oil fuel can be burned in industrial or utility boilers or industrial furnaces if they have a Class B(3) recycling permit with conditions on the storage prior to burning. This provision is less stringent than the corresponding regulation proposed by DEQE in the summer of 1985, but is more stringent than the Federal rule. It is intended that this will be reconsidered after EPA issues its final regulations for burning of off-specification used oil fuels in 1986 or 1987.

DEQE will consider changes to make these regulations less stringent (so long as they are more stringent than current

Federal regulations) if public discussion demonstrates that this is necessary for the viability of the used oil recycling industry and that it can be done without creating a potential hazard to the public health, safety, or welfare, or the environment.

310 CMR 30.270 Concerning Class B(4) Recycling Permits for Precious Metals

The January 4, 1985 Federal rule brought under regulation the precious metal industry, whose wastes were previously exempt from Federal regulation when recycled because it was presumed that their value would cause them to be managed with care for economic reasons, and therefore they would be an insignificant hazard to public health. EPA decided that this argument was not persuasive, and required that the precious metal wastes be transported using a hazardous waste manifest. In order to adopt regulations at least as stringent as EPA's on this subject and at the same time consistent with the provisions of G. L. c. 21C, DEQE thinks it is necessary to require facilities receiving these wastes to be subject to some form of permitting.

310 CMR 30.271 Generator Standards

Persons generating hazardous precious metal wastes would be required to manage them as hazardous wastes except in one instance. If a generator wished to accumulate these materials for more than 90 days (but less than one calendar year), he could do so by obtaining a Class B(4) permit pursuant to 310 CMR 30.272.

310 CMR 30.273 Transporter Standards

Persons who wish to transport precious metal materials only, and not other hazardous wastes, may do so by obtaining a Class B(4) recycling permit rather than a transporter's license. They will be required to comply with some of the same requirements as other transporters, and to demonstrate that they comply with the intent of the other regulations because of the value of the materials they transport. The application procedure and permit conditions are described in 310 CMR 30.274.

310 CMR 30.275 Facility Standards

Persons intending to recycle precious metal materials, or to act as transfer stations for those materials, may do so as a licensed facility or obtain a Class B(4) recycling permit to do so. Those who choose to do so with a permit rather than a license must be prepared to demonstrate that their practices meet the intent of the regulations of 310 CMR 30.500 and 30.600 dealing with management by a treatment facility. The

application procedure and permit conditions are given in 310 CMR 30.276.

310 CMR 30.277 Recyclers Not Located in Massachusetts

This section requires that facilities not in Massachusetts manage their precious metal materials lawfully when they are in Massachusetts; and that recyclers receiving materials from Massachusetts certify that they are operating lawfully in their own State.

310 CMR 30.280 Concerning Facilities that Recycle Lead-Acid Batteries

This section requires that facilities that reclaim lead-acid batteries for their lead content obtain a license if they store them before reclaiming them for their lead content.

310 CMR 30.290 Concerning Class C Recyclable Materials

Class C materials are generally managed as hazardous wastes, and persons receiving them from off the site of generation for recycling must be licensed facilities, except for those who receive materials directly into the recycling process without prior storage. Those persons can receive a Class C recycling permit, but DEQE will scrutinize such applications carefully to see that the receipt of the material directly into the recycling process is not merely a subterfuge to avoid the more stringent licensing requirements. The permit may not be issued if it is found to be storage of hazardous process intermediates that do not meet standards appropriate to a facility receiving hazardous wastes for the purpose of storage.

The new opportunity for recycling Class C materials is to recycle them at the site of generation. This was previously forbidden by 310 CMR 30.354 unless the recycler obtained a facility license or the material was recycled in a completely enclosed system. DEQE invites comment on whether additional standards should be specified besides the requirements of 310 CMR 30.690 for treatment and storage in tanks.

In addition to these proposed regulations, a number of revisions are proposed to be made for consistency.

** non-text page **

Texts of Amendments and Additions

to the Regulations Pertaining to

Recycling

** non-text page **

1. 310 CMR 30.001 and 30.002 are hereby amended by striking out said sections and inserting in place thereof the following sections:-

30.001: Authority

These regulations are promulgated by the Commissioner of the Department pursuant to the authority granted by M.G.L. c. 21C, §§4 and 6, and by M.G.L. c. 21E, §6.

30.002: Purpose

These regulations are intended to protect public health, safety, and welfare, and the environment, by comprehensively regulating the generation, storage, collection, transport, treatment, disposal, use, reuse, and recycling of hazardous waste in Massachusetts. These regulations should be read together with M.G.L. c. 21C and M.G.L. c. 21E, each of which has many important substantive requirements not repeated in these regulations.

2. 310 CMR 30.010 is hereby amended by striking out the following definitions:-

End-user
Recycle
Re-use
Use
User

3. 310 CMR 30.010 is hereby further amended by inserting the following definitions:-

Boiler means an enclosed device using controlled flame combustion and having the following characteristics:
(1) the device must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
(2) the device's combustion chamber and primary energy recovery section(s) must be of integral form; and
(3) while in operation the device must maintain a thermal efficiency of at least 60%; and
(4) the device must export and utilize at least 75% of the recovered energy calculated on an annual basis.

By-products means materials that are not primary products of a production process and not solely or separately produced by the production process. The term does not include a co-product that is produced that is produced for the general public's use and is ordinarily used in the form in which it is produced.

Completely enclosed recycling system means a treatment unit that is primarily for the recycling of a regulated recyclable material and that is totally enclosed so that it is designed, constructed, and operated to prevent spills, leaks or emission of hazardous materials into the environment (See "treatment which is an integral part of the manufacturing process"), and is managed so that the recyclable material is accumulated in tanks or containers in compliance with 310 CMR 30.340.

Fossil fuel means coal, coke, distillate oil, residual oil, or natural or manufactured gas.

Fossil fuel utilization facility means any furnace(s), fuel burning equipment, boiler(s), space heater(s), or any appurtenance thereto used for the burning of fossil fuels, for the emission of products of combustion, or in connection with any process which generates heat and may emit products of combustion, but does not mean a motor vehicle.

Fuel means any solid, liquid, or gaseous material used for the production of heat or power by burning.

Incinerator means any enclosed device using controlled flame combustion that is neither a boiler nor an industrial furnace.

Industrial Boiler means a boiler that is:
(1) located on the site of a facility engaged in a manufacturing process in which substances are transformed into new products, including the component parts of products, by mechanical or chemical processes, or
(2) used in conjunction with a greenhouse.

Industrial furnace means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:
(1) cement kilns
(2) lime kilns
(3) aggregate kilns
(4) phosphate kilns
(5) coke ovens
(6) blast furnaces
(7) smelting, melting and refining furnaces
(8) titanium dioxide chloride process oxidation reactors
(9) methane reforming furnaces
(10) pulping liquor recovery furnaces
(11) combustion devices used in the recovery of sulphur values from spent sulphuric acid

Recycled material
(1) Recycled material means any material that is used or reused or reclaimed.
(2) Used or reused material means any material that is either:
(a) employed as an ingredient (including use as an intermediate) in an industrial process to make a product, except when distinct components of the material are recovered as separate end products, or
(b) employed in a particular function or application as an effective substitute for a commercial product.
(3) reclaimed material means any material that is processed to recover a useable product or that is regenerated.

Scrap metal means pieces of metal (e.g. bars, turnings, rods, sheets, wire, or powder) or pieces that are fabricated or joined from metal pieces, and which are worn and superfluous.

Speculative accumulation means (1) accumulation or storage of material before that material is recycled, or (2) accumulation or storage of material in the hope or expectation, but without there being a legally enforceable commitment, that the material will be lawfully recycled. Speculative accumulation shall be deemed not to be occurring if the person accumulating or storing the material persuades the Department that
(1) potentially the material can lawfully and feasibly be recycled, and that
(2) during the calendar year (commencing on January 1), the amount of material that actually is lawfully recycled, or that actually is lawfully transferred to a different site for recycling, equals at least seventy-five percent (75%), by weight or volume, of the total amount of the material accumulated or stored during the calendar year. To determine whether the foregoing percentage requirement has been met with respect to any particular material, the calculations shall include only material of the same type (e.g. slags from a single smelting process) that is combusted as a fuel, used, re-used, or recycled in the same way (i.e. that is utilized in the same way or that is obtained from the same re-use or recycling process). The calculations shall not include hazardous waste that, pursuant to 310 CMR 30.140(1)(f), is not subject to regulation as hazardous waste.

Spent material means any material that has been used and that as a result of such use, e.g. by contamination or by depletion, can no longer serve the purpose for which it was produced without processing.

Use constituting disposal means the utilization of hazardous waste in a manner that has continuing utility and results in, or is in effect, disposal.

Used oil means used and/or reprocessed, but not subsequently re-refined, oil that has served its original intended purpose, or any contaminated oil resulting from the clean-up of an oil spill. Such oil includes, but is not limited to, fuel oil, engine oil, gear oil, cutting oil, transmission fluid, and dielectric fluid.

Utility boiler means a boiler that is used to produce electric power, steam, or heated or cooled gases or fluids for sale.

4. 310 CMR 30.010 is hereby further amended by striking out the definition of "Treatment which is an integral part of the manufacturing process" and inserting in place thereof the following definition:-

Treatment which is an integral part of the manufacturing process means any treatment method or technique which is at the site of generation of the waste, is not primarily for the purpose of recycling hazardous waste, and is:
(1) Directly connected via pipes or the equivalent from an industrial production process [i.e. a process which produces a product, produces an intermediate, produces a by-product, renders a service (e.g. dry cleaning), or produces a material which is used back in the production process]; and
(2) Totally enclosed so that it is designed, constructed, and operated to prevent spills, leaks, or emissions of hazardous materials to the environment. A treatment unit may be deemed "totally enclosed" if it is completely contained on all sides (i.e., an open-topped tank or treatment vessel shall not be deemed totally enclosed). If a treatment unit is vented, it may be deemed "totally enclosed" only if such vent(s) is/are designed to prevent overflow and emissions of gases, vapors, or aerosols where such events might occur through normal operation, equipment failure, or process upsets. This shall be accomplished with the use of suitable traps, recycle lines, sorption units, or the equivalent. If the effluent from the treatment unit discharges to surface water, ground water, or a sewer, the treatment unit may be deemed "totally enclosed" only if all discharges are in compliance with all applicable Federal, State, and local laws, regulations, and permits. If one unit operation in a series of unit operations is not "totally enclosed" or connected by pipe to the unit immediately upstream from that unit, then only unit operations upstream from that unit may be deemed "treatment which is an integral part of the manufacturing process".

5. 310 CMR 30.010 is hereby further amended by striking out the definition of "Waste" and inserting in place thereof the following definition:-

Waste

(1) Waste means any discarded material not exempted pursuant to 310 CMR 30.145. A waste may be a solid, liquid, semi-solid or contained gaseous material, or any refuse or sludge, and may result from industrial, commercial, mining or agricultural operations, or from municipal or other governmental activities, or from the activities of other organizations which are not households.

(2) Discarded material means any material that is

(a) abandoned by being disposed of, burned, or incinerated, or

(b) accumulated, stored, or treated in lieu of being disposed of, burned, or incinerated, or

(c) inherently waste-like material, or

(d) recycled in a manner that is not in compliance with 310 CMR 30.000.

(3) Inherently waste-like material means material that is

(a) hazardous waste numbered F020, or

(b) hazardous waste numbered F021 (except when used as an ingredient to make a product at the site of generation), or

(c) hazardous waste numbered F022, or

(d) hazardous waste numbered F023, or

(e) hazardous waste numbered F026, or

(f) hazardous waste numbered F028, or

(g) materials designated as such by the Administrator of the EPA pursuant to 40 CFR §261.2(d), or

(h) materials designated as such by the Department using the following criteria:

1. the materials are ordinarily disposed of, burned or incinerated; or

2. the materials contain constituents listed in 310 CMR 30.160 that are not ordinarily in raw materials or commercial products or are not necessary to the recycling of the material; or

3. the material may pose a significant potential hazard to the public health, safety, or welfare, or the environment, if it is not managed pursuant to 310 CMR 30.300 through 30.900.

6. 310 CMR 30.099(12) is hereby repealed.

7. 310 CMR 30.100 is hereby amended by inserting the following section:-

30.139: Waste Code Numbers Used for Special Purposes

The following waste code numbers shall be used as set forth below:

Hazardous Waste No.	Substance
M011	Crankcase oil, i.e. oil drained from the crankcases of internal combustion (Otto or Diesel cycle) engines using, as fuel, gasoline, diesel oil, methane, propane, or liquified petroleum gas. This designation is to be used only on manifests describing shipments from the original generator to a licensed facility.
M099	Non-hazardous waste. This designation is to be used only for a non-hazardous waste shipped using a hazardous waste manifest as a shipping paper for the convenience of the generator, the transporter, or the facility.
M144	Hazardous waste designated as such pursuant to 310 CMR 30.144. The manifest shall include (1) a description of the most hazardous constituent of the waste, and (2) a reference to the date when the Department designated the waste as hazardous, and (3) a reference to the office of the Department which designated the waste as hazardous. For example: "Alizarin mixture, 3/7/85 NE".

8. 310 CMR 30.141 is hereby amended by striking out subsections (3) and (4); by redesignating subsection (5) as subsection (3); and by striking out subsection (6) and inserting in place thereof the following subsection:-

(4) In the case of a waste which can be recycled, the Department has approved that recycling pursuant to 310 CMR 30.200, provided that it is recycled in compliance with 310 CMR 30.200 and such approval.

9. 310 CMR 30.143 is hereby amended by striking out said section and inserting in place thereof the following section:-

30.143: Special Requirements for Materials Which Are Recycled

Materials that would be hazardous wastes if disposed of, but are recycled in compliance with 310 CMR 30.200 instead of being disposed of, are subject to the provisions of 310 CMR 30.200.

10. 310 CMR 30.200 through 30.299 are hereby amended by striking out said sections and inserting in place thereof the following:-

30.200: Provisions for Recyclable Materials

30.201: Applicability

(1) 310 CMR 30.201 through 30.299, cited collectively as 310 CMR 30.200, are intended to protect public health, safety, and welfare, and the environment, by regulating the recycling of materials which would be hazardous wastes if they were disposed of, or stored or treated prior to being disposed of. 310 CMR 30.200 applies to materials that would be hazardous wastes if disposed of, but are recycled in compliance with 310 CMR 30.200 instead of being disposed of. 310 CMR 30.200 does not apply to non-hazardous materials being recycled. 310 CMR 30.200 does not apply to the disposal of hazardous waste, or to the accumulation, storage, or treatment of hazardous waste prior to being disposed of (such activities are regulated elsewhere in 310 CMR 30.000).

(2) These regulations are promulgated pursuant to the authority given by G. L. c. 21C, §4 to waive regulation where there is no significant potential hazard to the public health, safety, or welfare, or the environment. If an action is taken which is consistent with 310 CMR 30.200 but creates a potential hazard to public health, safety, or welfare, or the environment, 310 CMR 30.200 shall cease to be applicable to that action, and that action shall be subject to all other provisions of 310 CMR 30.000.

30.202: Other Applicable Provisions

(1) Unless specifically exempted, all activities regulated by 310 CMR 30.200 shall also be subject to 310 CMR 30.001 through 30.064 and 30.100 through 30.199.

(2) Except as provided in 310 CMR 30.202(3), all materials that are subject to management in compliance with a recycling permit issued pursuant to 310 CMR 30.200 are subject to 310 CMR 30.200 [including, without limitation, 310 CMR 30.202(1)], to the conditions of the permit, and to no other provisions of 310 CMR 30.000 not specifically stated as conditions.

(3) Notwithstanding the provisions of 310 CMR 30.202(2), if any material subject to management in compliance with a recycling permit issued pursuant to 310 CMR 30.200 is managed in a way that is not in compliance with 310 CMR 30.200 or any condition of the permit, the material is subject to all provisions of 310 CMR 30.000.

30.203: Signatories

All permit applications and all permits issued pursuant to 310 CMR 30.200 shall be signed as follows:

(1) If the applicant is a corporation, by an individual who is a responsible corporate officer of the corporation and who is authorized by the corporation, in accordance with corporate procedures, to sign such documents on behalf of the corporation. As used in this section, "responsible corporate officer" shall mean a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other individual who performs similar policy-making or decision-making functions for the corporation.

(2) If the applicant is a partnership, by a general partner.

(3) If the applicant is a sole proprietorship, by the proprietor.

(4) If the applicant is a municipality or public agency, by a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

30.204: General Conditions

The following conditions shall apply to all permits issued pursuant to 310 CMR 30.200, regardless of whether or not such conditions are written into the permit. Permittees shall comply with such conditions whether or not they are written into the permit. Failure to comply shall be grounds for an enforcement action, including, without limitation, permit suspension or revocation.

(1) Duty to Comply. The permittee shall comply at all times with the terms and conditions of the permit, 310 CMR 30.000, M.G.L. c. 21C, M.G.L. c. 21E, and all other applicable State and Federal statutes and regulations.

(2) Duty to Maintain. The permittee shall always properly operate and maintain all facilities, equipment, control systems, and vehicles which the permittee installs or uses.

(3) Duty to Halt or Reduce Activity. The permittee shall halt or reduce activity whenever necessary to maintain compliance with 310 CMR 30.200 or the permit conditions, or to prevent an actual or potential threat to public health, safety, or welfare, or the environment.

(4) Duty to Mitigate. The permittee shall remedy and shall act to prevent all potential and actual adverse impacts to persons and the environment resulting from non-compliance with the terms and conditions of the permit. The permittee shall repair at his own expense all damages caused by such non-compliance.

(5) Duty to Provide Information. The permittee shall provide the Department, within a reasonable time, any information which the Department may request and which is deemed by the Department to be relevant in determining whether a cause exists to modify, revoke or suspend a permit, or to determine whether the permittee is complying with the terms and conditions of the permit.

(6) Entries and Inspections. The permittee shall allow personnel or other authorized agents of the Department or authorized EPA representatives, upon presentation of credentials or other documents as may be required by law, to:

(a) Enter at all reasonable times any premises, public or private, for the purposes of investigating, sampling or inspecting any records, condition, equipment, practice, or property relating to activities subject to M.G.L. c. 21C, M.G.L. c. 21E, or RCRA, as amended; and

(b) Enter at any time such premises for the purpose of protecting the public health, safety or welfare, or the environment; and

(c) Have access to and copy at all reasonable times all records that are required to be kept pursuant to the conditions of the permit, and all other records relevant to the permittee's hazardous waste activity.

(7) Records. All records and copies of all reports required by 310 CMR 30.200 shall be kept by the permittee for at least three years from the expiration of the permit. This period shall be automatically extended for the duration

of any enforcement action. This period may be extended by order of the Department. All record-keeping shall be in compliance with 310 CMR 30.007.

(8) Continuing Duty to Inform. The permittee shall have a continuing duty to immediately:
(a) correct any incorrect facts in an application; and
(b) report or provide any omitted facts which should have been submitted; and
(c) in advance, report to the Department each planned change in the permitted facility or activity which might result in non-compliance with 310 CMR 30.200 or with a term or condition of the permit; and
(d) report to the Department any cessation of the permitted activity.

(9) Preventing and Reporting Releases Into the Environment. No materials that are to be recycled shall be intentionally released into the environment or otherwise disposed of within Massachusetts except in full compliance with all applicable provisions of 310 CMR 30.000. All accidental releases of regulated recyclable material shall be immediately reported to the Department and to all other persons to whom such releases must be reported pursuant to State or Federal laws or regulations.

(10) Compliance with the Application and the Terms of the Permit. Except where 310 CMR 30.200 or other conditions of the permit provide otherwise, the materials that are to be recycled shall be recycled in the manner described in the application for the permit and in no other manner, and in compliance with all conditions of the permit. There shall be no change in the procedure of recycling without the prior express written approval of the Department.

(11) Transportation of Recyclable Material. Unless otherwise specified, all transportation of recyclable material shall be in full compliance with all DOT and other Federal regulations, and all State regulations, governing the transportation of hazardous materials.

(12) Annual Reporting. All permittees shall submit to the Department an annual report covering all recyclable material they handle. Each annual report shall be submitted to the Department no later than March 1 for the preceding calendar year. If the permittee transports or offers for transportation any recyclable material, such permittee shall use the form prescribed by the Department for Annual Reports submitted in compliance with 310 CMR 30.332. If the permittee treats, stores, or disposes of hazardous waste subject to 310 CMR 30.500, such permittee shall use the for

prescribed by the Department for Annual Reports submitted in compliance with 310 CMR 30.544. Any person who is subject to 310 CMR 30.204(12) and who does not have to file an Annual Report in compliance with 310 CMR 30.332 or 30.544 may submit the annual report required by 310 CMR 30.204(12) in the form of a letter to the Department. All annual reports submitted in compliance with 310 CMR 30.204(12) shall include at least the following information:

(a) The EPA identification number of the generator; and

(b) The name, address, and EPA identification number of the facility to which recyclable material was sent; and

(c) Identification of all recyclable material recycled at the site of generation. Such identification shall the include the EPA listed name or description, the EPA hazardous waste number, the DOT hazard class, and the amount of material recycled; and

(d) Identification of all recyclable material shipped to off-site facilities. Such identification shall the include the EPA listed name or description, the EPA hazardous waste number, the DOT hazard class, the amount of recyclable material transported, and the facility to which it was transported; and

(e) The name and EPA identification number of the transporters used.

30.205: Requirements for All Applications for Recycling Permits

All applications for recycling permits pursuant to 310 CMR 30.200 shall include at least the following:

(1) The name, address and EPA identification number of the applicant.

(2) The name and telephone number of an individual responsible for the permitted activity.

(3) A description of the material to be recycled, including waste code.

(4) A description of the recycling activity, including the estimated quantity to be recycled annually.

(5) If the material is to be stored prior to recycling, a description of the storage facility and of the management procedures to be used to prevent speculative accumulation.

(6) A signature pursuant to 310 CMR 30.203, certified pursuant to 30.009.

(7) Such other information as the Department may require to determine that the proposed recycling activity will be in

compliance with 310 CMR 30.200 and will not constitute a significant potential hazard to the public health, safety, or welfare, or the environment.

(30.207 through 30.209: Reserved)

30.210: Classification of Regulated Recyclable Materials

310 CMR 30.210 through 30.219, cited collectively as 310 CMR 30.210, describe the classification of those materials which are recycled in compliance with a permit but which would be hazardous wastes if disposed of or if treated, stored, transported or otherwise managed prior to disposed of.

30.211: Determining and Regulating What Is Regulated Recyclable Material

(1) A regulated recyclable material is any material which
(a) either
1. has the characteristic of a hazardous waste as described in 310 CMR 30.120 through 30.129, or
2. is listed in 310 CMR 30.131 through 30.136, or
3. has been determined by the Department to be a hazardous waste pursuant to 310 CMR 30.144,
and
(b) is recycled in compliance with 310 CMR 30.200 and the conditions of a recycling permit issued by the Department pursuant to 310 CMR 30.200 as an alternative to disposal, or storage or treatment prior to disposal.

(2) Regulated recyclable materials are subject to 310 CMR 30.200 and the conditions of the relevant recycling permit and to no other requirements of 310 CMR 30.000 not specifically cited as conditions of the permit. Regulated recyclable materials that are not recycled in compliance with the conditions of a recycling permit issued by the Department pursuant to 310 CMR 30.200 are hazardous wastes subject to all the requirements of 310 CMR 30.000.

30.212: Class A Regulated Recyclable Materials

Class A regulated recyclable materials are those that are determined by the Department to require the minimum degree of regulation because of some inherent property of the material, or because of some inherent property of the recycling process, or because the conditions of the recycling are such as to motivate the recycler to manage the recycling with minimum hazard to the public health, safety and welfare, and the environment. The following are Class A recyclable materials:

(1) Those recyclable materials that are neither used in a manner constituting disposal nor burned for energy recovery nor accumulated speculatively and are either:
(a) used or reused as ingredients to make a product provided that the materials are not being reclaimed; or
(b) used or reused as substitutes for commercial products; or
(c) returned as substitutes for feedstock in the original production process without being reclaimed.

(2) Industrial ethyl alcohol

(3) Scrap metal

(4) Used batteries returned for regeneration to the manufacturer or other regeneration facility.

(5) A sludge having the characteristics of a hazardous waste when being reclaimed.

(6) A by-product having the characteristics of a hazardous waste when being reclaimed.

(7) A commercial chemical product listed in 310 CMR 30.133 or 30.136 which has never been used and which is being reclaimed.

(8) Waste oil including waste oil that has the characteristics of a hazardous waste if recycled in some other manner than being burned for energy recovery.

(9) Used oil fuel burned for energy recovery in compliance with 310 CMR 30.250.

(10) A material that
(a) has been given a variance from consideration as a RCRA solid waste by the EPA pursuant to 40 CFR §§260.31 and 260.33 and
(b) that is approved by the Department in writing to be considered a Class A regulated recyclable material.

30.213: Class B Regulated Recyclable Materials

Class B regulated recyclable materials are those recyclable materials which have been determined by the Department to require some specific management practices in order to be recyclable without constituting a significant potential hazard to the public health, safety or welfare, or the environment. The following are Class B recyclable materials:

(1) Class B(1) - materials that are used in a manner constituting disposal.

(2) Class B(2) - hazardous waste fuels.

(3) Class B(3) - off-specification used oil fuels.

(4) Class B(4) - materials having an economically recoverable content of precious metals.

(5) Class B(5) - Spent lead-acid batteries reclaimed for recovery of lead.

30.214 Class C Regulated Recyclable Materials

Class C regulated recyclable materials are those which are neither Class A nor Class B. Table 30.214 sets forth some specific examples of Class C recyclable materials.

(30.215-30.219: Reserved)

30.220: Permits for Recycling Class A Regulated Recyclable Materials

310 CMR 30.220 through 30.229, cited collectively as 310 CMR 30.220, describe the procedure for obtaining a permit to recycle Class A recyclable materials, and the basic and optional conditions that may be imposed in such permits. No person shall recycle any Class A recyclable material without first applying for and obtaining a Class A permit.

30.221: Intent of Class A permits

Class A recycling permits are intended to regulate the recycling of Class A regulated recyclable materials to such a degree as to protect public health, safety, and welfare, and the environment, from any significant potential hazard while also facilitating the recycling of these materials as a socially and environmentally desirable alternative to disposal. Class A recycling permits are not intended to provide such stringency of regulation as to discourage the recycling.

30.222: Applications for Class A Permits

A generator wishing to recycle Class A recyclable material at the site of generation, or to send such material to be recycled at another location, or recyclers wishing to receive such material sent from another location, shall submit an application on a form acceptable to the Department. In addition what is set forth in 310 CMR 30.205, the application shall include:

Table 310 CMR 30.214 - Examples of Class Designations

Type of material being recycled	What happens to the material	
	Burned or used in a manner constituting disposal	reclaimed
Spent material	B	C(1)(2)(3)(4)
Sludge listed in 310 CMR 30.131 or 30.132	B	C(2)
Sludge which is hazardous pursuant to 310 CMR 30.120 through 30.125	B	A
By-product listed in 310 CMR 30.131 or 30.132	B	C(1)(2)
By-product which is hazardous pursuant to 310 CMR 30.120 through 30.125	B	A
Commercial chemical product listed in 30.133 or 30.136	B	A
Scrap metal	A	A

Notes: (1) Except that industrial ethyl alcohol is Class A.
(2) Except that materials with precious metal are Class B.
(3) Except that lead-acid batteries sent for regeneration are Class A.
(4) Except that lead-acid batteries sent for reclamation are Class B

(1) for generators sending materials off the site of generation, the names, addresses, and EPA identification numbers of the recycler(s) to whom the materials are to be sent,

(2) for recyclers receiving materials from off the site of recycling, the names, addresses, and EPA identification numbers of the generator(s) from whom the materials are to be received,

(3) for generators sending materials outside of Massachusetts, or recyclers receiving materials from outside of Massachusetts, a statement from those persons outside of Massachusetts who are referred to in the application, certified pursuant to 30.009, that:

(a) the information contained in the application is correct and accurate, and

(b) the activity they intend to engage in is in compliance with applicable State and Federal laws and regulations.

(4) for generators intending to recycle specification used oil fuel by burning it in a used oil fuel burning space heater,

(a) a description of the space heater, and

(b) proof that the space heater is a type of space heater approved by the Department pursuant to 310 CMR 7.00 and by the Massachusetts Department of Public Safety

(5) for generators intending to recycle specification used oil fuel by burning it in a fossil fuel utilization facility, proof that the burning of specification used oil fuel in that facility has been approved by the Department pursuant to 310 CMR 7.00.

30.223: Conditions for Class A Recycling Permits

In addition to the general conditions for all recycling permits set forth in 310 CMR 30.204, the following conditions shall apply to Class A recycling permits, regardless of whether or not such conditions are written into the permit. Permittees shall comply with such conditions whether or not they are written into the permit. Failure to comply shall be grounds for an enforcement action, including, without limitation, permit suspension or revocation.

(1) if the permittee stores or accumulates the recyclable material in tanks, such tanks shall be compliance with the requirements set forth or referred to in 310 CMR 30.692.

(2) if the permittee stores or accumulates the recyclable material in containers, such containers shall be compliance with the requirements set forth or referred to in 310 CMR 30.683 through 30.685.

(3) Class A recyclable materials shall only be stored or accumulated in tanks or containers.

(4) The permittee shall maintain such records as will adequately demonstrate that there has occurred no speculative accumulation.

(5) If a wastewater treatment unit is part of the recycling for which the permit is issued, such wastewater treatment unit shall be compliance with the requirements set forth or referred to in 310 CMR 30.605.

(6) The design and operation of the recycling facility shall be in compliance with the requirements set forth in 310 CMR 30.524(1) (emergency prevention and response).

(7) The design and operation of the recycling facility shall be in compliance with the requirements set forth in 310 CMR 30.514 or with general security standards of equivalent stringency.

(8) The permittee shall inspect the facility and remedy malfunctions in compliance with requirements set forth in 310 CMR 30.515(1)(a) and (b).

(9) The permittee shall instruct or give on-the-job training to personnel involved in the recycling which teaches them how to comply with the conditions of the recycling permit and to operate the recycling facility in a manner that is not hazardous to public health, safety, or welfare or the environment.

(10) The permittee shall plan and prepare for fires, explosions, or other occurrences that might result in release of hazardous materials to the environment or otherwise constitute a potential hazard to public health, safety, or welfare, or the environment.

30.223: Additional Conditions for Class A Recycling Permits

When the Department deems it necessary or appropriate to prevent a recycling facility from becoming a significant potential hazard to public health, safety, or welfare, or the environment, the Department may require that the permittee satisfy other conditions, including, without limitation, requirements set forth in 310 CMR 30.600, 30.700, 30.800 or 30.900.

(30.224 through 30.229: Reserved)

30.230: Permits for Recycling Class B Regulated Recyclable Material

310 CMR 30.230 through 30.239, cited collectively as 310 CMR 30.230, describe the procedure for obtaining a permit to recycle Class B recyclable materials, and the basic and optional conditions that may be imposed in such permits. Class B recyclable materials are listed in 310 CMR 30.213 and ar those recyclable materials which have been determined by the Department to require some specific management practices in addition to those set forth in 310 CMR 30.210 through 30.229 in order to be recycled without constituting a significant potential hazard to public health, safety, or welfare, or the environment. No person shall recycle any Class B(1) recyclable material without first applying for and obtaining a Class B(1) permit. No person shall recycle any Class B(2) recyclable material without first applying for and obtaining a Class B(2) permit. No person shall recycle any Class B(3) recyclable material without first applying for and obtaining a Class B(3) permit. No person shall recycle any Class B(4) recyclable material without first applying for and obtaining a Class B(4) permit.

30.231: Permits for Recycling Class B(1) Regulated Recyclable Materials - Materials That Are Recycled in a Manner Constituting Disposal

(1) Materials are used in a manner constituting disposal when they are used by being discharged, deposited, injected, dumped, spilled, or placed into or on any land or water so that the material or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(2) With the exception of those materials described in 310 CMR 30.231(3), all recyclable materials used in a manner constituting disposal shall be managed in full compliance with all applicable provisions of 310 CMR 30.000, including without limitation, 310 CMR 30.500, 30.600, 30.700, 30.800 and 30.900.

(3) Commercial chemical materials that are listed in 310 CMR 30.133 or 30.136, that have never been used, and that are ordinarily used on the land, are, when recycled by being used in a manner constituting disposal, subject to 310 CMR 30.200 and the conditions of a validly issued recycling permit, and to no other provisions of 310 CMR 30.000 not referenced in 310 CMR 30.200 or in the permit.

(4) Generators and transporters of commercial chemical products to be used in a manner constituting disposal in

compliance with a valid recycling permit are subject to all the provisions of 310 CMR 30.000 for the generation and transportation of a hazardous waste. Without limiting the generality of the foregoing, the material shall be transported using a hazardous waste manifest. A recycler having a valid recycling permit shall be a designated facility for the purposes of 310 CMR 30.305.

(5) Recyclers of commercial chemical products to be used in a manner constituting disposal shall do so in compliance with a recycling permit issued pursuant to 310 CMR 30.232.

30.232: Applications for Class B(1) Permits

(1) Any person wishing to recycle Class B(1) recyclable material shall apply to the Department for a Class B(1) permit to do so. The application shall be on a form acceptable to the Department. In addition what is set forth in 310 CMR 30.205, the application shall include:

(a) The names, addresses, and EPA identification numbers of all generators generating the material to be recycled, and

(b) The location of the recycling, if it is not the given address of the recycler, and

(c) A full description of the material to be recycled, including any hazardous constituent listed in 310 CMR 30.160 present in a concentration greater than 1.0 mg/liter and not ordinarily present in the material when in commercial distribution, and

(d) A full description of the proposed method of use, specifically including, without limitation, any departures from the ordinary method of use or the method approved by the manufacturer, and

(e) A description of all sensitive receptors and environmentally sensitive activities at or near the site of use, including, without limitation, residences, schools, and drinking water supplies, and

(f) Such other information as the Department may request in order to determine if the use constitutes a significant potential hazard to public health, safety, or welfare, or the environment.

(2) Any person who wishes to recycle, at a location outside of Massachusetts, Class B(1) recyclable material generated in Massachusetts shall apply to the Department to be considered designated facilities for the purpose of receiving manifested materials. The application shall be on a form acceptable to the Department. In addition what is set forth in 310 CMR 30.205, the application shall include:

(a) The names, addresses and EPA identification numbers of the generators located in Massachusetts from whom the recycler intends to obtain recyclable material, and

(b) A statement that
1. the State in which the recycling would be done, if applicable, or the EPA, has approved such recycling, or
2. approval of the recycling is not required by State or Federal law in effect where the recycling would be done.

(3) Permits to use commercial chemical materials in a manner constituting disposal may be issued by the Department if the Department determines that such use would not constitute a significant potential hazard to the public health, safety, or welfare, or the environment, or be in noncompliance with 310 CMR 30.200. Such permits shall contain at least the conditions set forth in 310 CMR 30.204.

(4) When the Department deems such action necessary or appropriate to prevent a Class B(1) recycling facility from becoming a significant potential hazard to public health, safety, or welfare, or the environment, the Department may require that the permittee satisfy other conditions, including, without limitation, requirements set forth in 310 CMR 30.600, 30.700, 30.800 or 30.900.

(30.233 through 30.239: Reserved)

30.240: Concerning Hazardous Waste Fuel

A hazardous waste fuel is a regulated recyclable material that is recycled by being burned for energy recovery in an industrial or utility boiler or in an industrial furnace, but not in a hazardous waste incinerator licensed pursuant to 310 CMR 30.800 and 310 CMR 7.08, and which is:

(1) A material which is not a specification used oil fuel or an off-specification used oil fuel pursuant to 310 CMR 30.250(4), and which,
(a) is listed or otherwise described in 310 CMR 30.131 through 30.136, or
(b) has a characteristic described in 310 CMR 30.120 through 30.125, or
(c) has been determined to be a hazardous waste pursuant to 310 CMR 30.144, or
(d) is presumed to be a hazardous waste fuel pursuant to 310 CMR 30.250(2)(a) or (b).

(2) A mixture of a hazardous waste fuel as described in 310 CMR 30.240(1) with specification used oil fuel, off-specification used oil fuel, unused commercial fuel oil, unused commercial crude oil, or any other non-hazardous material burnable as fuel.

30.241: Generator Standards

(1) All generators of hazardous waste fuel, regardless of whether or not they burn or market that fuel, shall manage that hazardous waste fuel in compliance with all provisions of 310 CMR 30.000 concerning the generation of hazardous waste.

(2) All generators of hazardous waste fuel who market the hazardous waste fuel they generate shall be subject to, and shall comply with, 310 CMR 30.243.

(3) All generators of hazardous waste fuel who burn the hazardous waste fuel they generate shall be subject to, and shall comply with, 310 CMR 30.244.

30.242: Transporter Standards

All of hazardous waste fuel shall be subject to, and shall comply with, all provisions of 310 CMR 30.000 concerning the transportation of hazardous waste.

30.243: Standards Applicable to Marketers of Hazardous Waste Fuels

(1) As used in 310 CMR 30.220, the term "marketer" means a person who sells or otherwise transfers a hazardous waste fuel to another person who wishes to or does burn it. The term "marketer" does not include a person who transfers hazardous waste to another person for conversion to a hazardous waste fuel by blending or other treatment if the person doing the blending does not wish to, and does not, burn the hazardous waste fuel. Persons who manage hazardous waste before it is converted to hazardous waste fuel shall be subject to all provisions of 310 CMR 30.000 concerning that management but shall not be subject to 310 CMR 30.240 through 30.249.

(2) In addition to complying with all other applicable requirements, a marketer of hazardous waste fuel shall:

(a) notify the EPA and the Department of his hazardous waste fuel activity pursuant to 310 CMR 30.060 through 30.064 before engaging in such activity, or constructing or operating any site or works for engaging in such activity, and

(b) before sending the first shipment of hazardous waste fuel, receive from the person burning the hazardous waste fuel a certification that said person

1. has notified the EPA and the Department of his hazardous waste fuel activity pursuant to 310 CMR 30.060 through 30.064 and

2. has a currently valid license or permit for that activity, and

(c) in addition to complying with all other applicable record-keeping requirements, keep a copy of each certification of hazardous waste fuel activity that he sends or receives for three years after the date he last engages in hazardous waste fuel activity. This period shall be automatically extended for the duration of any enforcement action. This period may be extended by order of the Department. All record-keeping shall be in compliance with 310 CMR 30.007.

(3) Marketers and other persons who blend or otherwise treat hazardous wastes or hazardous waste fuels, or who receive hazardous wastes or hazardous waste fuels from another person for the purpose of marketing hazardous waste fuels, or who store hazardous waste fuels, shall do so at a facility that is either

(a) licensed pursuant to 310 CMR 30.800 and in compliance with all applicable provisions of 310 CMR 30.500 through 30.900, or

(b) a facility having interim status pursuant to RCRA.

(4) Generators who market hazardous waste fuel but neither blend or otherwise treat them nor burn them nor store them shall manage the hazardous waste fuel in compliance with 310 CMR 30.200 and a Class B(2) recycling permit issued pursuant to 310 CMR 30.244.

30.244: Applications and Permits for Recycling Class B(2) Regulated Recyclable Materials - Materials That Are Hazardous Waste Fuel

(1) Any generator wishing to market Class B(2) recyclable material shall apply to the Department for a Class B(2) permit to do so. The application shall be on a form acceptable to the Department. In addition to what is set forth in 310 CMR 30.205, the application shall include:

(a) The names, addresses and EPA identification numbers of the persons to whom the hazardous waste fuel is to be marketed.

(b) Copies of the certifications required pursuant to 310 CMR 30.243(2)(b).

(2) In addition to the general conditions set forth in 310 CMR 30.204, the permit conditions shall, without limitation, require compliance with 310 CMR 30.243(2).

30.245: Standards Applicable to Burners of Hazardous Waste Fuels

(1) The burning of hazardous waste fuel is prohibited except in

(a) an industrial and utility boiler or an industrial furnace permitted or licensed by the Department for that burning, or

(b) a hazardous waste incinerator licensed pursuant to 310 CMR 7.00 and 30.000, or
(c) a cement kiln located within the boundaries of a municipality with a population less than 500,000 (based on the most recent census statistics) if such cement kiln is in full compliance with all requirements of 310 CMR 30.000 and 7.08 applicable to hazardous waste incinerators.

(2) In addition to complying with all other applicable requirements, a burner of hazardous waste fuel shall:
(a) notify the EPA and the Department of his hazardous waste fuel activity pursuant to 310 CMR 30.060 through 30.064 before engaging in such activity, or constructing or operating any site or works for engaging in such activity, and
(b) before accepting the first shipment of hazardous waste fuel, provide to the marketer a certification that he
1. has notified the EPA and the Department of his hazardous waste fuel activity pursuant to 310 CMR 30.060 through 30.064, and
2. has a currently valid license or permit for that activity, and
3. is in compliance with the requirements of 310 CMR 30.240 through 30.249.
(c) in addition to complying with all other applicable record-keeping requirements, keep a copy of each certification of hazardous waste fuel activity that he sends or receives for three years after the date he last engages in hazardous waste fuel activity. This period shall be automatically extended for the duration of any enforcement action. This period may be extended by order of the Department. All record-keeping shall be in compliance with 310 CMR 30.007.

(3) Burners who receive hazardous waste fuel from off the site of burning or who store hazardous waste fuel prior to burning shall do so at a facility that is either
(a) licensed pursuant to 310 CMR 30.800 and in compliance with all applicable provisions of 310 CMR 30.500 through 30.900, or
(b) a facility having interim status pursuant to RCRA, provided that the owner or operator shall have filed a Part A permit application for the hazardous waste fuel activity, or have applied to amend an existing Part A permit application to include the hazardous waste fuel activity, by no later than May 29, 1986.

(4) Generators who market hazardous waste fuel but neither blend or otherwise treat them nor burn them nor store them

shall manage the hazardous waste fuel in compliance with 310 CMR 30.200 and a Class B(2) recycling permit issued pursuant to 310 CMR 30.244.

(4) Generators who do not store hazardous waste fuel before burning shall manage that fuel in compliance with 310 CMR 30.200 and a Class B(2) recycling permit issued pursuant to 310 CMR 30.246.

30.246: Class B(2) Recycling Permits for Generators who Burn Hazardous Waste Fuel at the Site of Generation

(1) Any generator wishing to burn hazardous waste fuel at the site of generation shall apply to the Department for a permit to do so. The application shall be on a form acceptable to the Department. In addition what is set forth in 310 CMR 30.205, the application shall include:

(a) a description of
1. the hazardous waste fuel to be burned,
2. how the fuel will be blended or otherwise treated, and
3. with what the fuel will be blended. (Note that after hazardous waste fuel is blended, the mixture is hazardous waste fuel.)

(b) a description of each facility for accumulating and blending or otherwise treating hazardous waste fuels, showing that the construction and operation of each such facility shall be in compliance with applicable requirements set forth or referred to in 310 CMR 30.300.

(c) a description of how the hazardous waste fuel shall be managed so that it will be accumulated and not stored.

(d) a description of the facility in which the hazardous waste fuel is to be burned, and of the management of sludges and other residues from the burning.

(e) a copy of the Department's approval of the burning pursuant to 310 CMR 7.00.

(2) In addition to the general conditions for all recycling permits set forth in 310 CMR 30.204, the following conditions shall apply to Class B(2) permits, regardless of whether or not such conditions are written into the permit. Permittees shall comply with such conditions whether or not they are written into the permit. Failure to comply shall be grounds for an enforcement action, including, without limitation, permit suspension or revocation.

(a) the hazardous waste fuel shall at all times be managed as hazardous waste in compliance with all relevant requirements of 310 CMR 30.300.

(b) all sludges and residues of the burning shall be presumed to be hazardous waste unless and until the Department is persuaded otherwise, and the Department has so determined in writing.

(c) the facility shall be operated at all times in compliance with the terms and conditions of the approval given by the Department pursuant to 310 CMR 7.00.

(30.247 through 30.249: Reserved)

30.250: Concerning Used Oil Fuel

(1) The term "used oil" is defined in 310 CMR 30.010. When used oil is recycled by being burned for energy recovery, the used oil is a regulated recyclable material termed "used oil fuel". Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment.

(2) Except as provided by 310 CMR 30.250(3) below, used oil that is mixed with hazardous waste and burned for energy recovery is a hazardous waste fuel subject to 310 CMR 30.240. There shall be a presumption that the used oil has been mixed with hazardous waste when any one or more of the following conditions has been met:

(a) The used oil is "transformer oil", i.e. oil that has been used in a transformer, capacitor, switch, or other electrical device for insulation or heat transfer purposes. Transformer oil shall be presumed to be mixed with PCBs in concentrations equal to or exceeding 50 parts per million unless and until the Department is persuaded otherwise.

(b) The used oil contains 1000 or more parts per million of total halogens, in which case the used oil shall be presumed to be a mixture of oil and halogenated hazardous wastes unless and until the Department is persuaded that the used oil contains no halogenated constituent listed in 310 CMR 30.160 in a significant amount.

(3) Used oil fuel having one or more of the characteristics of a hazardous waste as described in 310 CMR 30.120 through 30.125 shall not presumed to be a mixture of used oil and a hazardous waste and shall be subject to 310 CMR 30.250 through 30.259 unless it has been mixed with a hazardous waste, other than waste oil (M001), that is a hazardous waste because it is listed or otherwise described in 310 CMR 30.130 through 30.136. If used oil has been mixed with a hazardous waste, other than waste oil (M001), that is a hazardous waste because it is listed or otherwise described in 310 CMR 30.130 through 30.136, it shall not be subject to 310 CMR 30.250 through 30.259. In any event, the Department may deem any particular batch or lot of used oil to be hazardous waste subject to all applicable provisions of 310 CMR 30.000, and not used oil subject to 310 CMR 30.250 through 30.259, if the Department determines that such action is necessary or appropriate to protect public health, safety, or welfare, or the environment.

(4) If used oil fuel does not exceed the allowable level of any constituent or property as set forth in Table 310 CMR 30.250, such used oil fuel is "specification used oil fuel". If used oil fuel does exceed the allowable level of any constituent or property as set forth in Table 310 CMR 30.250, such used oil fuel is "off-specification used oil fuel".

(5) Specification used oil fuel shall be subject to a Class A recycling permit when burned for energy recovery.

(6) Off-specification used oil fuel shall be subject to all the provisions of 310 CMR 30.250 through 30.259.

Table 310 CMR 30.250

Constituent or Property	Allowable Level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100°F minimum
Total Halogens	4,000 ppm maximum*

(*see also 310 CMR 30.250(2)(b)

30.251: Prohibitions

(1) A person may market off specification used oil fuel only to owners or operators of facilities who have notified the EPA and the Department of their hazardous waste fuel activity pursuant to 310 CMR 30.060 through 30.064, who have an EPA identification number, and whose facilities, if they are located in Massachusetts, are either:
(a) licensed pursuant to 310 CMR 30.800, or
(b) facilities having interim status pursuant to RCRA, and specifically permitted by the Department for this activity, or
(c) facilities for which the Department has issued a Class B(3) recycling permit.

(2) Off-specification used oil fuel may be burned only in
(a) industrial or utility boilers or industrial furnaces which are

1. located on the site of a manufacturing process where substances are then being transformed into new products, including the component parts of new products, by mechanical or physical processes, and
2. specifically approved by the Department for such burning pursuant to 310 CMR 7.00; or

(b) a used oil fuel fired space heater, provided that
1. the make and model of that space heater has been approved by the Department pursuant to 310 CMR 7.00 and by the Department of Public Safety, and
2. the heater burns only used oil fuel generated on site or that is received from do-it-yourself oil changers who generate the oil as household waste subject to the exemption in 310 CMR 30.104(6), and
3. that space heater has a maximum design capacity of not more than 0.5 million Btu per hour, and
4. the combustion gases from the space heater are vented to the ambient air.

(3) Off-specification used oil fuel may be blended with specification used oil fuel or unused fuel oil for the purpose of producing specification fuel oil only at a facility licensed pursuant to 310 CMR 30.800 or at a facility having interim status pursuant to RCRA and that is permitted to do so by the Department. Mixing that is incidental to the filling or emptying of a stationary or vehicular tank is not blending. Blending by metered mixing in a completely enclosed system immediately prior to burning may be permitted in a Class B(3) recycling permit.

30.252: Exemptions

(1) Waste oil that is not used oil, including but not limited to superfluous or abandoned fuel, lubricating or other oil, storage tank bottoms or clean-out sludge, sludge from the separate of unused oil from a non-hazardous waste, and other unused waste oils, shall be managed in compliance with all provisions of 310 CMR 30.000 when disposed of, or with all provisions of 310 CMR 30.250 through 30.259 when recycled by burning for energy recovery, except that unused oil and mixtures of unused oil with a non-hazardous material that are to be disposed or recycled pursuant to an action in compliance with G.L. c. 21E may be managed in compliance with a case-by-case approval by the Department.

(2) Notwithstanding the provisions of 310 CMR 30.252(1), a waste oil that is not a used oil and that is to be reused for the original purpose for which it was produced with no other processing than separation from a non-hazardous material at the site of generation or at a facility licensed pursuant to 310 CMR 30.800 is not a waste if it is marketed as a commercial product.

(3) The separation of waste oil from a non-hazardous waste or non-hazardous material at the site of generation is not treatment and does not require a license pursuant to 310 CMR 30.800. The sludge from such a process is a hazardous waste or wastewater subject to regulation as such.

(4) Used oil that is obtained from a person meeting the requirements of 310f CMR 30.353 for the generation of insignificant quantities of hazardous waste or from a do-it-yourself oil changer generating the used oil as a household waste subject to the exemption in 310 CMR 30.104(6) is deemed to be generated when it is accumulated at the site of generation or other person who has notified pursuant to 310 CMR 30.060 through 30.064, and is not subject to regulation pursuant to 310 CMR 30.000 prior to that time.

(5) Used oil or oily wastewater that is obtained from a vessel subject to regulation by the U.S. Coast Guard at or under the direction of a facility having a Certificate of Adequacy issued by the U.S. Coast Guard pursuant to 33 CFR Part 158 is deemed to be generated when it is received by that facility or its agent and is not subject to regulation pursuant to 310 CMR 30.000 prior to that time.

(6) Used oil that is not a fuel, including, but not limited to, lubricating oils, cooling oils, industrial cutting oils, etc, is subject to a Class A recycling permit when reclaimed and returned to its original use. Used oil which is rerefined is subject to a Class A recycling permit at the point of generation.

30.253: Generator Standards

(1) Except for the generators described in 310 CMR 30.253(2) below, generators of waste oil are subject to the requirements of 310 CMR 30.300.

(2) Persons who generate used oil only in small quantities pursuant to 310 CMR 30.351 and other hazardous wastes in insignificant quantities pursuant to 310 CMR 30.353 are not required to notify the Department pursuant to 310 CMR 30.060 through 30.064. They are required to have their used oil transported by a licensed transporter but are not required to use a manifest for their shipments of used oil. If they do choose to have their used oil transported by a licensed transporter using a manifest, they shall notify pursuant to 310 CMR 30.060 through 30.064 and obtain an EPA identification number. If they choose not have their used oil transported using a manifest, the used oil must be transported using a log whose contents shall be as set forth in 310 CMR 30.254(2).

(3) Generators who market used oil fuel directly to burners are also subject to 310 CMR 30.255.

(4) Generators who are also burners of used oil fuels are also subject to 310 CMR 30.256.

(5) Accumulation of waste oil at the site of generation by a large quantity generator shall be subject to 310 CMR 30.340(1)(a), (b) and (c), and 30.340(2).

(6) Each new underground tank for the accumulation of used oil shall be:

(a) either designed, constructed and monitored in compliance with 310 CMR 30.693(3) or constructed of non-corrodible materials such as fiberglass-reinforced plastic or its equivalent, steel with external bonded non-corrodible material, or cathodically protected steel; and

(b) equipped with striker plates below openings used for liquid level measurement.

(7) On and after December 31, 1984, each existing underground tank for the accumulation of used oil shall be either in compliance with the secondary containment and monitoring standards of 310 CMR 30.693(3), or the owner or operator shall test each such underground tank at least once every thirty (30) days by measuring the height of the liquid in the tank with a dip stick, sealing the tank off, and measuring the height of the liquid again. If the difference in the two measurements is greater than one-half (1/2) inch, the owner shall notify the local fire chief and the Department immediately by the quickest available means and submit the results of the test to the Department within seven (7) days. The Department may require that a more accurate test be conducted or that the tank be repaired or that the tank be removed from service. In addition, at least once every twelve (12) months, the test shall be performed in the same manner except that the tank shall be sealed off for a period of forty-eight (48) hours. The owner or operator shall maintain a log of these tests for a period of at least three (3) years and keep such log at the facility available for inspection by the Department. This 3-year period shall be automatically extended for the duration of any enforcement action. This period may be extended by order of the Department. Each log entry shall be entered, signed, and certified in compliance with 310 CMR 30.006 through 30.009.

(8) Any process at the site of generation which separates waste oil from a non-hazardous waste does not constitute treatment. Such activity shall be conducted in such a way as to prevent the release of waste oil into the environment.

30.254: Transporter Standards

(1) Except for the provisions of 310 CMR 30.254(2) and (3) below, waste oil and used oil fuel shall be transported as a hazardous waste using a manifest and shall be transported from the generator only to a facility licensed pursuant to 310 CMR 30.800 or to a burner having a Class B(3) recycling permit which is valid for the type of oil transported.

(2) Waste oil may be transported from a generator meeting the requirements of 310 CMR 30.253(2) by a licensed transporter using a log. If a log is used in lieu of a manifest it shall describe the transportation of waste oil in one day or one trip, whichever is shorter, and each entry shall contain at least the following:

(a) The name, address, EPA identification number and hazardous waste transporter's license number of the transporter,
(b) the date of the trip or daily entry
(c) the names and addresses of the generators from whom waste oil is collected on that day or trip,
(d) the amount of waste oil collected from each generator,
(e) the location of the delivery of the waste oil including the facility name, address, EPA identification number and license or permit identification.
(f) signatures of generators from whom waste oil was collected,
(g) signature of the transporter's employee making the collection and of the owner or operator of the reviewing facility or his designee. The log shall accompany the waste oil while it is being transported and shall be made available to the Department on request.

(3) Specification used oil fuel may be transported by a common carrier licensed to transport oil fuels. It shall be identified on the invoice or shipping paper as "specification used oil fuel" and it shall be transported only to a licensed facility or to a person having a valid Class A recycling permit for burning specification used oil fuel for energy recovery, or to a facility outside Massachusetts that is identified in the generator's Class A recycling permit to market specification used oil fuel.

(4) If specification used oil fuel is transported by a licensed transporter using a manifest it shall be managed as off-specification used oil fuel pursuant to 310 CMR 30.250.

(5) Licensed transporters of waste oil or off-specification used oil fuel shall report monthly to the Department on a form acceptable to the Department the source, amount and

destination of all waste oil and off-specification used oil fuel transported during the month. Such reports shall be subject to 310 CMR 30.006 and 30.007, certified pursuant to 310 CMR 30.009, and in compliance with 310 CMR 30.407.

30.255: Standards for Marketers of Used Oil Fuel

(1) Persons who sell or otherwise transfer used oil fuel to persons who burn that fuel for energy recovery are termed "marketers" of used oil fuel. Generators who transfer waste oil to collectors who do not themselves burn that oil are not marketers. Facilities who blend used oils and unused oils to prepare specification oil fuel are marketers whether or not they sell the specification used oil fuel directly to a person who burns that fuel.

(2) Marketers are subject to the prohibitions of 310 CMR 30.251.

(3) Marketers shall notify pursuant to 310 CMR 30.060 through 30.064. If they have already notified of other hazardous waste activity they still have to notify of their waste oil activity.

(4) Marketers who transfer off-specification used oil fuel to a burner shall do so using a hazardous waste manifest. The material shall be termed "off-specification used oil fuel" and given the waste code M001.

(5) Marketers who transfer specification used oil fuel to a burner shall do so on an invoice or shipping paper which identifies the material shipped as "specification used oil fuel".

(6) Marketers who first claim that a quantity or batch of used oil is specification used oil fuel shall be able to document that claim by a report of analysis of the oil by a procedure acceptable to the Department, or by some other documentable source of information acceptable to the Department. Marketers who first make this claim shall maintain such documentation and the name and address of the facility to which that batch or quantity of specification used oil fuel is shipped, the quantity of fuel shipped, the date of shipment or delivery and a cross-reference to the documentation of analysis or other information.

(7) Marketers shipping off-specification used oil fuel to a burner of facility shall obtain a written notice saying that the recipient of the fuel has notified EPA and the Department of his used oil fuel activity and that, if a burner, he will burn the off-specification used oil fuel

only in an industrial or utility boiler or industrial furnace.

(8) Marketers intending to receive off-specification used oil fuel from other marketers shall first provide them with a written notice certifying that he has notified EPA and the Department of his used oil fuel activity.

(9) Marketers shall maintain copies of notices, invoices and manifests sent or received pursuant to 310 CMR 30.255(4) through (8) for three years from the date of their last used oil fuel activity.

(10) Generators who intend to market specification used oil fuel shall do so in compliance with a Class A recycling permit issued pursuant to 310 CMR 30.220 which, in addition to the conditions listed in that section, shall have as a condition that the permittee comply with all relevant requirements of 310 CMR 30.250.

(11) Generators intending to market off-specification used oil fuel shall do so in compliance with a Class B(3) recycling permit issued pursuant to 310 CMR 30.261.

(12) Marketers intending to receive off-specification used oil fuel from off their site and either blend it to produce specification used oil fuel or to market off-specification oil fuel to a burner shall do so in compliance with a facility license issued pursuant to 310 CMR 30.800.

(13) Marketers intending to receive only specification used oil fuel from off their site and to receive no other used or waste oil nor other hazardous wastes and to market this oil to burners shall do so in compliance with the conditions of a Class B(3) recycling permit issued pursuant to 310 CMR 30.263.

30.256: Standards for Burners of Used Oil Fuels

(1) Persons who receive used oil fuel and burn it for energy recovery in a fossil fuel combustion unit are termed "burners". Burners are subject to 310 CMR 30.256, other requirements referred to in 310 CMR 30.256, and the conditions of any required license or permit.

(2) Generators who burn oil generated on the site of burning in a used oil fired space heater are subject to the conditions of a Class A recycling permit pursuant to 310 CMR 30.220.

(3) Generators who burn oil generated on site in a fossil fuel utilization facility are subject to the conditions of a Class B(3) recycling permit pursuant to 310 CMR 30.265 and 30.266.

(4) Burners who receive specification used oil fuel from off the site of burning are subject to the conditions of a Class A recycling permit pursuant to 310 CMR 30.220.

(5) Burners who receive off-specification used oil fuel from off the site of burning and store that fuel prior to burning shall do so in compliance with the conditions of a Class B(3) recyclable permit pursuant to 310 CMR 30.267 and 30.268 or a license pursuant to 310 CMR 30.800.

(6) Burners are subject to the prohibitions of 310 CMR 30.251.

(7) Burners shall notify EPA and the Department of their used oil fuel activity pursuant to 310 CMR 30.060 through 30.064, except for generators who burn oil generated on the site of burning in a used oil fired space heater as set forth in 310 CMR 30.256(2) above. Even if a burner has notified of other hazardous waste activity he shall notify of his used oil burning activity.

(8) Before a burner accepts his first shipment of off-specification used oil fuel from a marketer he shall provide the marketer with a certification that:

(a) he has notified EPA and the Department of his used oil fuel activity, and

(b) he will burn off-specification used oil fuel only in an industrial or utility boiler or industrial furnace, and

(c) he has a valid license or recycling permit appropriate to the activity he is certifying to.

(9) Burners claiming to be burning specification used oil fuel shall be able to document that a batch or lot of fuel does meet the specifications in Table 310 CMR 30.250. Such documentation may be the results of analysis or a certification from a marketer.

(10) Burners who mix or blend used oil fuel with other used oil fuel or unused fuel oil for the purpose of producing specification used oil fuel shall do so in compliance with the terms and conditions of a license pursuant to 310 CMR 30.800, with the exception that the metered mixing of used oil fuel with unused oil in a completely enclosed system immediately prior to burning will be subject to the conditions of a Class B(3) recycling permit. Mixing that is

incidental to the filling or discharging of a fixed or vehicular storage tank will not be considered treatment.

(11) Burners shall maintain records of their used oil burning activity for three years after the activity ceases. These records shall include copies of invoices and manifests recording received shipments of sued oil fuel and the documentation that that fuel meets specifications, if appropriate, and any information provided with the application for a license or recycling permit. This 3-year period shall be automatically extended for the duration of any enforcement action. This period may be extended by order of the Department. All record-keeping shall be in compliance with 310 CMR 30.007.

(30.257 through 30.259: Reserved)

30.260: Permits for Recycling Class B(3) Regulated Recyclable Materials - Materials That Are Recycled By Being Burned for Energy Recovery

(1) The following persons engaged in used oil activity require a Class B(3) recycling permit to engage in that activity:
(a) Generators who intend to market used oil fuel. They shall also comply with 310 CMR 30.261 and 30.262.
(b) Marketers who intend to receive specification used oil fuel from off their site and to market that fuel. They shall also comply with 310 CMR 30.263 and 30.264.
(c) Generators who intend to burn used oil fuel generated at the site of burning in a fossil fuel utilization facility. They shall also comply with 310 CMR 30.265 and 30.266.
(d) Burners who receive off-specification used oil fuel generated off the site of burning. They shall do so in compliance with 310 CMR 30.267 and 30.268.

(2) Generators who burn used oil generated on the site of burning in a used oil fired space heater are subject to the conditions of a Class A recycling permit issued pursuant to 310 CMR 30.220.

(3) Burners who receive only specification used oil fuel from off the site of burning are subject to a Class A recycling permit issued pursuant to 310 CMR 30.220.

30.261: Applications for Class B(3) Permits for Generators to Market Used Oil Fuel

Any generator wishing to market used oil fuel directly to burners shall apply to the Department for a Class B(3)

permit to do so. The application shall be on a form acceptable to the Department. In addition what is set forth in 310 CMR 30.205, the application shall include:

(1) Names, addresses and EPA identification numbers of the burners to whom the used oil fuel is to be marketed.

(2) If specification oil fuel is to be marketed, a description of the proposed procedure whereby the oil fuel is to be characterized as meeting the specification. If analysis is to be used describe whether the analytical facility is certified or the quality assurance procedures to be used.

(3) If off-specification used oil fuel is to be marketed, copies of the certifications provided by the burners pursuant to 310 CMR 30.256.

30.262: Conditions of a Class B(3) Recycling Permit for a Generator to Market Used Oil Fuel

In addition to the general conditions set forth in 310 CMR 30.204 and the generator standards set forth in 310 CMR 30.253 and the standards for marketers set forth in 310 CMR 30.255, each Class B(3) permit for a generator to market used oil fuel shall contain the following conditions:

(1) If specification used oil fuel is to be marketed, the condition that the facility used for analysis of the fuel shall be certified or meet standards of quality control and quality assurance acceptable to the Department.

(2) If more than 1,000 kilograms per month is generated, the conditions of 310 CMR 30.223 shall also be met.

30.263: Application for a Class B(3) Recycling Permit to Market Specification Used Oil Fuel

Any marketer wishing to obtain specification used oil fuel from off his site and to market that fuel to burners shall apply to the Department for a Class B(3) permit to do so. The application shall be on a form acceptable to the Department. In addition what is set forth in 310 CMR 30.205, the application shall include:

(1) The names, addresses and EPA identification numbers of the generators or marketers from whom the specification used oil fuel is to be obtained. If the generators are permitted as marketers this shall be noted.

(2) The method whereby the used oil fuel obtained is to be demonstrated to meet specifications, and the method whereby the used oil fuel marketed is to be certified as meeting the specifications. If analysis is to be used describe whether the analytical facility is certified or the quality assurance procedures to be used.

(3) The names, addresses and EPA identification numbers of the burners to whom the specification used oil fuel is to be marketed.

30.264: Conditions of a Class B(3) Recycling Permit to Market Specification Used Oil Fuel

In addition to the general conditions set forth in 310 CMR 30.204 and the generator standards set forth in 310 CMR 30.253 and the facility conditions set forth in 310 CMR 30.223, each Class B(3) permit to market specification used oil fuel shall contain the following conditions:

(1) The facility shall not contract to receive any off-specification used oil fuel or hazardous waste, and that if any of either are received the facility shall manage them as hazardous wastes and immediately notify the Department.

(2) No mixing, blending or other treatment of specification used oil fuel shall occur unless it is incidental to the filling or discharging of a fixed storage facility or vehicular tank.

(3) Any analytical facility used to characterize specification used oil fuel shall be certified or have other quality control and quality assurance procedures that are accepted by the Department.

30.265: Application for a Class B(3) Recycling Permit to Burn Used Oil Fuel Generated at the Site of Burning

Generators who intend to burn used oil fuel generated at the site of burning may apply for a Class A Recycling permit if they can establish that they will generate only specification used oil fuel and not off-specification used oil fuel or burnable hazardous wastes. All other generators intending to burn used oil fuel generated at the site of burning (except those burning in used oil fired space heaters) shall apply for a Class B(3) Recycling permit using a form acceptable to the Department. In addition to the information required by 310 CMR 30.205 the application shall contain:

(1) The characteristics of the fuel as determined by a procedure of analysis satisfactory to the Department, and the variation in those characteristics, if appropriate.

(2) A copy of the approval by the Department to burn that used oil fuel pursuant to 310 CMR 7.00

(3) The facilities for accumulation of the used oil fuel and the management of the accumulated fuel to show that it will not be speculatively accumulated.

(4) The procedure for mixing of this used oil fuel with other fuel demonstrating that it is not treatment requiring licensing pursuant to 310 CMR 30.800.

30.266: Conditions of a Class B(3) Recycling Permit to Burn Used Oil Fuel Generated at the Site of Burning.

In addition to the general conditions set forth in 310 CMR 30.204 and the generator standards set forth in 310 CMR 30.253 and the standards for burners set forth in 310 CMR 30.256, each Class B(3) permit to to burn used oil fuel at the site of generation shall contain the following conditions:

(1) The facility shall not receive any off-specification used oil fuel or hazardous waste fuel from off the site, and the facility shall burn no hazardous waste fuel generated on site or mix hazardous waste fuel with used oil fuel or unused fuel oil.

(2) The permittee immediately notify the Department of any change in the condition or source of the used oil fuel that would require a change in the burning or management conditions.

(3) No mixing of the used oil fuel shall occur unless it is incidental to the filling or discharging of a stationary or vehicular tank or it is done by metering in a completely enclosed system immediately prior to burning.

(4) The analytical facility used to characterize the used oil shall be certified or shall demonstrate a program of quality control and quality assurance that is approved by the Department.

30.267: Application for a Class B(3) Recycling Permit to Burn Off-Specification Used Fuel Generated Off The Site of Burning

Persons who intend to burn off-specification used oil fuel generated off the site of burning shall apply for a Class

B(3) recycling permit on a form acceptable to the Department. In addition to the information required by 310 CMR 30.205 the application shall contain:

(1) a copy of the approval by the Department to burn off-specification used oil fuel pursuant to 310 CMR 7.00, specifically noting the requirements of that permit, including
(a) any limitations on the specifications of the oil to be burned, and
(b) any required air pollution control technology required to burn oil of that specification

(2) the procedure whereby oil of the specification described pursuant to 310 CMR 30.267(1)(a) is to be obtained from marketer(s) of used oil fuel; or, if oil is not to be obtained with that specification, by what means a mixture of off-specification used oil fuel and virgin fuel oil is to be made to meet the burning permit from DAQC. Note that if mixing in tanks is done to prepare oil to a given specification the process is treatment of a hazardous waste and subject to 310 CMR 30.500 through 30.900. Mixing incidental to the filling of a storage tank is not treatment. Mixing in a completely enclosed system immediately prior to burning may be done under the conditions of a Class B(3) recycling permit.

(3) The facilities for storage of the used oil fuel prior to burning shall be described in sufficient detail to show that it meets the standards of 310 CMR 30.690 through 30.698, and that management procedure and record maintenance will be used to demonstrate that the used oil fuel will not be accumulated speculatively.

30.268: Conditions of a Class B(3) Recycling Permit to Burn Used Oil Fuel Generated Off the Site of Burning

In addition to the general conditions set forth in 310 CMR 30.204 and the standards for burners set forth in 310 CMR 30.256, each Class B(3) permit for off-site burning of used oil fuel shall shall contain the following conditions:

(1) The burner shall comply with 310 CMR 30.530 through 30.534 (use of manifests by facilities).

(2) The facility shall not receive hazardous waste fuel or other hazardous wastes from off-site, and the facility shall mix no hazardous waste generated on the site with off-specification oil fuel or virgin fuel oil.

(3) The permittee shall immediately notify the Department of any change in specification of the used oil fuel that would affect either the burning or management of the fuel.

(4) The permittee shall do no mixing of used oil fuel with specification used oil fuel or virgin fuel oil unless that mixing is incidental to the filling of a tank or in a completely enclosed metering system immediately before burning.

(5) The permittee shall at all times comply with the air quality standards.

(30.269: Reserved)

30.270: Concerning Class B(4) Recycling Permits for the Recycling of Materials Containing Economically Recoverable Quantities of Precious Metals

Persons managing recyclable materials containing economically recoverable quantities of gold, silver, platinum, palladium, irridium, osmium, ruthenium or any combination of these (designated collectively as "precious metals") are subject to 310 CMR 30.200 when these materials are recycled for the purpose of recovering the precious metals and they are not subject to any requirements of 310 CMR 30.000 not specifically referred to in 30.200 or as a condition for a license or permit to engage in that management. The precious metal content will be considered to be economically recoverable as long as the precious metal is actually recovered as a metal or chemical combination metal is actually recovered as a metal or chemical combination or compound, and the person generating the material obtains an economic benefit compared to the avoided cost of disposal.

All transport of recyclable material containing precious metals will require the use of the hazardous waste manifest as a shipping paper, and compliance with all relevant provisions in 310 CMR 30.000 dealing with the use of the manifest. The manifest is not required for useable end products of the recycling when returned to trade use (e.g. metal ingots) nor for intermediate products of recycling that are neither listed in 310 CMR 30.131 through 30.136 nor have the characteristics of a hazardous waste described in 310 CMR 30.120 through 30.125.

In all situations, persons managing recyclable materials containing precious metals have the option of managing them as hazardous wastes in compliance with all relevant provisions of 310 CMR 30.000.

30.271: Generator Standards

Persons generating recycling materials containing precious metals may manage them as hazardous wastes in full compliance with 310 CMR 30.300 or may manage them in compliance with a Class B(4) recycling permit issued by the Department. Generators who manage recyclable materials containing precious metals in compliance with a Class B(4) recycling permit shall comply with all provisions of 310 CMR 30.300 except that the material may be accumulated for up to one (1) calendar year provided that the material is not accumulated speculatively.

30.272: Generator Permits

(1) Generators who intend to manage recyclable material containing precious metals in compliance with a recycling permit shall apply on a form acceptable to the Department. In addition to the information required by 310 CMR 30.205 the application shall contain a description of the management procedures whereby the permittee will be able to demonstrate that the material has not been speculatively accumulated.

(2) In addition to the general conditions set forth in 310 CMR 30.204 and the standards for burners set forth in 310 CMR 30.256, each Class B(4) recycling permit to generate recyclable materials containing precious metals shall contain the following conditions:

(a) the recyclable materials shall be managed as hazardous wastes in full compliance with 310 CMR 30.300 except that

(b) recyclable materials may be accumulated for a calendar year provided that they are not speculatively accumulated.

30.273: Transportation Standards

Persons transporting recyclable materials containing precious metals may transport them in full compliance with the requirements of 310 CMR 30.400 including a transporter's license obtained pursuant to 310 CMR 30.800 or in compliance with a Class B(4) recycling permit to transport recyclable materials containing precious metals. Transporters who transport recyclable materials in compliance with a Class B(4) recyclable permit shall comply with a least the following conditions:

(1) The transporter shall transport only recyclable materials containing economically recoverable amounts of precious metals and shall not transport other recyclable material or hazardous wastes.

(2) The transporter shall notify EPA and the Department pursuant to 310 CMR 30.060 through 30.064.

(3) The transporter shall obtain and maintain a certification from the Massachusetts Department of Public Utilities that he is in compliance with M.G.L. c. 159B.

(4) The transporter may accept recyclable material only from a generator who has notified pursuant to 310 CMR 30.060 through 30.064 or a facility with a valid license pursuant to 310 CMR 30.800 or a Class B(4) recycling permit for recycling of precious metals or a transporter who is in compliance with 310 CMR 30.400 or has a valid Class B(4) recycling permit to transport recyclable material containing precious metals.

(5) The transporter shall comply with the requirements of 310 CMR 30.404 through 30.408

(6) The transporter shall comply with the requirements of 310 CMR 30.409 concerning the training of employees.

(7) The transporter shall maintain evidence of financial responsibility acceptable to the Department. In the absence of special conditions (e.g. extremely hazardous materials) the kind and extent of liability protection common to the industry will usually be acceptable.

(8) The transporter shall comply with the provisions of 310 CMR 30.412(1), 30.413 and 30.415 dealing with spills and emergency conditions.

(9) The transport vehicle shall bear all markings, including placards, required by DOT regulations, and shall carry, in the cab of the vehicle, information identifying the owner and operator of the vehicle in a form satisfactory to the Department.

30.274: Transporter Permits

(1) Persons who intend to transport recyclable materials in compliance with a Class B(4) recycling permit shall apply on a form which is acceptable to the Department. In addition to the information required by 310 CMR 30.205 the application shall contain:

(a) sufficient information to demonstrate that the applicant will be able to comply with the standards given in 310 CMR 30.273 and

(b) such additional information as the Department may require in order to be assured that, compared to the transportation of hazardous wastes by a licensed

transporter, the transport of recyclable material by the applicant will not constitute a significant potential hazard to the public health, safety, or welfare, or the environment.

(2) In addition to the general conditions set forth in 310 CMR 30.204, each Class B(4) recycling permit to transport recyclable materials containing economically recoverable amounts of precious metals shall contain at least the following conditions:

(a) The transporter shall comply with the standards listed in 310 CMR 30.273.

(b) The transporter shall deliver recyclable materials only

1. a Massachusetts facility that has a facility license pursuant to 310 CMR 30.800, or
2. a Massachusetts facility having interim status pursuant to RCRA and a permit from the Department to handle those recyclable materials, or
3. a Massachusetts facility that has a Class B(4) recycling permit to recycle materials containing precious metals pursuant to 310 CMR 30.275 through 30.278, or
4. a facility outside of Massachusetts that is designated a facility by the EPA pursuant to 40 CFR Part 266 Subpart F, or that has an equivalent State designation.

(c) any other condition that the Department determines is necessary to assure that the transportation of recyclable material by the permittee does not constitute a significant potential hazard to public health, safety or welfare, or the environment.

30.275: Facility Standards

Persons recycling materials containing an economically recoverable amount of precious metals shall do so in compliance with a treatment, storage and disposal facility license pursuant to 310 CMR 30.500, 30.600, 30.700, 30.800 and 30.900, or with a Class B(4) recycling permit issued pursuant to 310 CMR 30.200. Persons who recycle materials in compliance with a recycling permit shall comply with at least the following conditions:

(1) Recyclers shall notify the EPA and the Department pursuant to 310 CMR 30.060 through 30.064.

(2) Recyclers shall provide the notice required by 310 CMR 30.512(1).

(3) Recyclers shall have the capability of obtaining a timely analysis of incoming materials to assess their hazardous characteristics and the quantity of recoverable precious metal they obtain.

(4) Recyclers shall make provision for security that meet the requirements of 310 CMR 30.514(1).

(5) Recyclers shall inspect and maintain their facilities in such a way as to meet the requirements of 310 CMR 30.515(1)(a) and (b)

(6) Recyclers shall have a program of instruction or on-the-job training for employees who deal with hazardous recyclable materials and wastes that will enable them to perform their functions in such a way that they do not constitute a significant potential hazard to the public health, safety or welfare, or the environment.

(7) Recyclers shall plan for emergencies and contingencies in such a way as to prevent and minimize hazards to the public health, safety and welfare, and the environment from fires explosions, spills or any other unplanned sudden or non-sudden release of hazardous constituents into air, soil or surface or ground water. An example of an adequate planning procedure would be compliance with 310 CMR 30.520 through 30.524 or the equivalent.

(8) Recyclers shall comply with the requirements set forth in 310 CMR 30.530 through 30.534 relating to the use of the manifest.

(9) Recyclers shall comply with 310 CMR 30.560(1) (regarding ignitable, reactive or incompatible materials).

(10) Recyclers shall comply with such provisions of 310 CMR 30.602 as the Department may determine are necessary for the protection of the public health, safety or welfare, or the environment.

(11) Recyclers shall maintain copies of all manifests, and of reports required for compliance with 310 CMR 30.530 through 30.534 for at least three years from the date of the manifest or report; and shall also maintain, in order to demonstrate that materials are not being accumulated speculatively:

(a) records showing amount of material stored at the beginning of the calendar year,

(b) records showing amount of material received or generated during the calendar year, and

(c) records showing the amount of materials in storage at the end of the calendar year.

(12) The 3-year period set forth in 310 CMR 30.275(11) shall be automatically extended for the duration of any enforcement action. This period may be extended by order of the Department. All records shall be kept in compliance with 310 CMR 30.007.

(13) Recyclers shall manage all hazardous wastes in full compliance with 310 CMR 30.000.

30.276: Recycling Permits

(1) Persons who intend to recycle materials with a recoverable amount of precious metals in compliance with a Class B(4) recycling permit shall apply on a form acceptable to the Department. In addition to the information required by 310 CMR 30.205 the application shall contain at least sufficient information to demonstrate that the applicant is competent to comply with the requirements of 310 CMR 30.275. In addition, the Department may require additional information necessary that it be assured that the recycler will not constitute a significant potential hazard to the public health, safety and welfare, or the environment.

(2) In addition to the general conditions set forth in 310 CMR 30.204, a Class B(4) permit to recycle materials shall contain at least the following conditions:

(a) The permittee comply with the requirements of 310 CMR 30.275.

(b) Any other condition that the Department deems necessary to protect public health, safety and welfare, and the environment.

(3) 310 CMR 30.275 and 30.276 shall apply to any permitted facility that intends to receive manifested recyclable materials containing precious metals, whether these facilities recycle and reclaim the metals or merely act as transfer stations for the purpose of consolidating shipments to other recyclers.

30.277: Recyclers Not Located in Massachusetts

(1) Generators located outside of Massachusetts who send materials to recyclers in Massachusetts shall have the materials transported by a person with a valid Massachusetts transporter's license or a permit issued pursuant to 310 CMR 30.273 and 30.274.

(2) Transporters intending to transport recyclable materials containing precious metals to or from locations in Massachusetts shall have a Massachusetts hazardous waste transporter license or a permit issued pursuant to 310 CMR 30.273 and 30.274.

(3) Facilities located outside of Massachusetts intending to receive recyclable materials from generators located in Massachusetts shall notify the generator and the Department in a letter certified pursuant to 310 CMR 30.009 that they are designed as a facility pursuant to 40 CFR 266 Subpart F or have an equivalent State designation and that they are in compliance with all applicable State and Federal regulations.

30.278: Special Provision for Small Quantities of Photographic Materials

Materials which have been used in photographic processes, including spent materials, are subject to a Class A recycling permit if they are:

(1) generated in quantities less than 100 kg per month, and
(2) not hazardous for any reason other than having the characteristic of EP toxicity for silver pursuant to 310 CMR 30.125, and
(3) recycled by a recycler having a valid Class B(4) recycling permit for the recycling of materials containing precious metals, and
(4) not speculatively accumulated.

(30.279: Reserved.)

30.280: Concerning Facilities that Recycle Spent Lead-Acid Batteries

(1) Facilities that store spent lead-acid batteries prior to reclaiming them for lead values are subject to all applicable provisions of 310 CMR 30.500, 30.600, 30.700, 30.800 and 30.900 for a facility that stores hazardous wastes received from off the site of generation.

(2) Facilities that generate, transport or collect spent lead-acid batteries, or which store them but do not reclaim them for their lead content, are not subject to regulation under 310 CMR 30.000 as long as the electrolyte is safely contained within the battery during their management of the battery. Open or leaking lead-acid batteries, and electrolyte removed from lead-acid batteries, are hazardous wastes subject to all provisions of 310 CMR 30.000.

(3) Facilities that reclaim spent lead-acid batteries for their lead content but do not store them before reclamation shall do so in compliance with a Class C recycling permit issued pursuant to 310 CMR 30.294 for facilities that reclaim without prior storage.

30.290: Concerning Recycling Permits for the Recycling of Class C Regulated Recyclable Material

Class C recyclable materials, as defined in 310 CMR 30.210, are those recyclable materials which neither are inherently less hazardous than non-waste hazardous materials nor have particular characteristics justifying their classification as Class A or Class B materials. Except as otherwise specified in 310 CMR 30.200, they shall be managed as hazardous wastes at all times.

30.291: Generator Standards for Class C Materials

Generators of Class C recyclable materials shall manage them as hazardous wastes in full compliance with all applicable provisions of 310 CMR 30.000 and shall comply with all applicable provisions of 310 CMR 30.300.

30.292: Transporter Standards for Class C Materials

Transporters of Class C recyclable materials shall manage them as hazardous wastes in full compliance with all applicable provisions of 310 CMR 30.000 and shall comply with all applicable provisions of 310 CMR 30.400.

30.293: Recycler Standards for Recyclers of Class C Materials Who Store Before Recycling

Recyclers of Class C recyclable materials shall manage them as hazardous wastes in full compliance with all applicable provisions of 310 CMR 30.000 and shall comply with all provisions of 310 CMR 30.500, 30.600, 30.700, 30.800 and 30.900 for those who receive hazardous wastes from off the site of generation. Such facilities shall have a treatment, storage and/or disposal facility license pursuant to 310 CMR 30.800.

30.294: Recycler Standards for Recyclers of Class C Materials Who Do Not Store Before Recycling

Recyclers of Class C recyclable materials who receive that material from off the site of generation directly into the recycling process so that there is no storage before recycling may comply with 310 CMR 30.293 or they may recycle that material in compliance with a Class C Recycling Permit pursuant to 310 CMR 30.295. In addition to the general conditions of 310 CMR 30.204 and 30.206 the facility shall comply with at least the following conditions:

(1) the recycler shall comply with 310 CMR 30.502, 30.511 through 30.516, 30.521 through 30.524, 30.530 through 30.534, 30.541 through 30.545, 30.560, and 30.580 through 30.586.

(2) the recycler shall comply with 310 CMR 30.602, 30.605, 30.660 through 30.675 and 30.680 through 30.698 with respect to materials in the process of recycling as well as recyclable materials received from off the site of generation.

(3) the recycler shall comply with 310 CMR 30.700 with regard to new facilities or major modifications of existing facilities.

(4) The recycler shall provide evidence of financial responsibility acceptable to the Department but not greater than that required for a facility for treatment of hazardous waste having the same kinds of treatment and storage of intermediate products of treatment or recycling.

30.295: Permits for Class C Recyclers Who Do Not Store Before Recycling

(1) Recyclers who intend to recycle Class C materials received from off the site of generation without storing prior to recycling shall do so in compliance with a Class C recycling permit. In addition to the information required by 310 CMR 30.205 the application shall contain at least:

(a) a complete description of the process whereby the recyclable materials are received into the recycling process without prior storage.

(b) Sufficient information about the recycling process to assure the Department that the factors permitting recycling without prior storage do not constitute a significant hazard to the public health, safety or welfare, or the environment.

(c) the information required by 310 CMR 30.803, and 30.804(1) through (5), (24) and (25).

(2) In addition to the general conditions set forth in 310 CMR 30.204, a Class C recycling permit for a recycler who does not store before recycling shall include the following additional conditions:

(a) The provisions of 310 CMR 30.810 through 30.829, 30.850 through 30.890, and 310 CMR 30.295 shall apply to the permit.

(b) The storage of any recyclable material, including intermediate products of recycling, shall meet the requirements of 310 CMR 30.680 through 30.698.

(c) Storage in waste piles or surface impoundments is prohibited.

30.296: Recycler Standards for Recycling Of Class C Recyclable Materials at the Site of Generation

Persons intending to recycle Class C materials at the site of generation may do so in compliance with 310 CMR 30.500, 30.600, 30.700, 30.800 and 30.900 as a licensed treatment, storage and disposal facility, or they may do so in compliance with a Class C recycling permit issued pursuant to 310 CMR 30.297. In addition to the conditions set forth in 310 CMR 30.204, each Class C recycling permit shall include the following conditions:

(1) The permittee shall manage all Class C materials as hazardous wastes in full compliance with 310 CMR 30.000 except that 310 CMR 30.354 shall not apply.

(2) The permittee shall meet the requirements of 310 CMR 30.690 for treatment and storage in tanks. Treatments in surface impoundments and waste piles is prohibited.

(3) The permittee meet all other conditions that the Department deems is necessary or appropriate to protect public health, safety, or welfare, or the environment.

30.297: Class C Recycling Permits for Recycling at the Site of Generation

(1) Persons intending to recycle Class C materials at the site of generation shall apply to do so on a form acceptable to the Department. In addition to the information required by 310 CMR 30.205 the application shall contain at least:

(a) a full description of the recycling process and an explanation of why the recycling system cannot be designed to be a completely enclosed system qualifying for a Class A recycling permit.

(b) a description of the management and recordkeeping procedures which will enable the recycler to assure the Department that the recyclable material is not stored but accumulated in compliance with 310 CMR 30.340.

(c) such other information as will assure the Department that the recycling will not constitute a significant potential hazard to public health, safety or welfare, or the environment.

(2) In addition to the conditions set forth in 310 CMR 30.204, and the standards set forth in 310 CMR 30.296, the permit shall include any other conditions that the Department requires to be assured that the recycling does not constitute a significant potential hazard to the public health, safety or welfare, or the environment.

11. 310 CMR 30.355 and 30.356 are hereby repealed.

12. 310 CMR 30.300 is hereby further amended by striking out 310 CMR 30.380 and inserting in place thereof the following:- said sections and inserting in place thereof the following:-

30.380: Generator Standards for Recycling

Persons who wish to recycle, or to have transported for recycling, the wastes that they generate shall do so in compliance with 310 CMR 30.200.

13. 310 CMR 30.381 through 30.385 are hereby repealed.

14. 310 CMR 30.400 is hereby amended by inserting the following sections-

30.450: Transporter Standards for Recycling

Persons who wish to transport hazardous wastes for the purpose of recycling them or having them recycled shall do so in compliance with 310 CMR 30.200.

15. 310 CMR 30.500 is hereby amended by inserting the following section:-

30.550 Facility Standards for Recycling

Facility owners or operators who wish to recycle hazardous wastes or have them recycled shall do so in compliance with 310 CMR 30.200.

** non-text page **

PART 3

REGULATIONS CONFORMING TO EPA REGULATIONS IMPLEMENTING THE HAZARDOUS WASTE AMENDMENTS OF 1984

1. Polyhalogenated Aromatic Hydrocarbons (e.g. dioxins)
2. Other conforming amendments

** non-text page **

Introduction

In 1985 Congress enacted the Hazardous and Solid Waste Amendments. This amendment called for changes in the regulatory procedures for hazardous waste. In keeping with the guidelines set by the Hazardous and Solid Waste Amendment the Environmental Protection Agency amended the federal regulations to reflect the Congressional changes on January 14, 1985 and July 15, 1985.

The purpose for adapting the following state regulations is two fold. The primary reason is to protect the public's health, welfare and safety and the environment. To adequately achieve this goal, hazardous waste regulations must reflect changes in technology.

As technology advances operators of hazardous waste will have methods available which will reduce the volume and toxcity of hazardous waste generated. These procedures will provide alternative methods for handling hazardous waste disposal practices. To encourage generators to take advantage of these new technologies it will be required that they submit annually a report outlining the techniques used to reduce the volume and toxicity of waste generated.

Another example is the waste management program for handling waste containing particular chlorinated dioxins; dibenzofurans and phenols. Waste which fall in this category specifically, chlorodibenzo-p-dioxan (CDD), - chlorodibenzo furans (CDF), tetrachlorodibenzo-p-dioxan (TCDD), and pentachlorophenol (PCP) are now respectively known to be the most potent man-made toxicants and carcinogenic reagents. These waste have been linked to the most devastating hazardous waste accidents most notably Love Canal (NY) and Times Beach (MO). Since mismanagement of these waste can cause detrimental effects to the public, regulations stipulate stringent disposal practices.

All the proposed amendments are intended to improve the effect of the code of regulations in protecting public health, safety and welfare, and the environment. Each group of proposed amendments is preceded by a discussion that explains the content and purpose of the proposed regulations.

** non-text page **

Explanation of individual Draft Amendment to the hazardous waste regulations relating to the management of hazardous waste containing halogenated dioxins - dibenzofurans and phenols.

30.010 This amendment defines the term polyhalogenated aromatic hydrocarbons.

30.099(14) This amendment prohibits the owner or operator of a facility having interim status from managing hazardous waste containing polyhalogenated aromatic hydrocarbons.

30.130 This amendment expands the hazardous waste from nonspecific source list to include waste generated from the manufacturing use of tri-, tetra-, or pentachlorophenol; tetra-, penta-, or hexachlorobenzenes or intermediates of the above, equipment previously used in the manufacturing use of tri, tetrachlorophenols or of tetra-, penta-, or hexachlorobenzene unused discarded formulations containing tri-, tetra-, or pentachlorophenol or unused discarded formulations containing derivatives of these compounds, and residues which arise from burning or thermal treatment of soil which is contaminated with waste generated as previously described.

30.133 This amendment references specific constituents found in this section as Polyhalogenated Aromatic hydrocarbons

30.136 This amendment includes any waste associated with the manufacturing use of tri-, tetra-, or pentachlorophenols; or penta-, or hexachlorobenzenes and derivatives of these compounds are to be considered as acute hazardous waste.

30.160 This amendment extends the hazardous waste constituent list.

30.351(1)c This amendment includes as acute hazardous waste material which contains Polyhalogenated Aromatic hydrocarbons, and subject these waste to the 1 kilogram per month small quantity generator limitation.

30.351(1)e This amendment subjects residues, contaminated soil water or other debris resulting from the cleanup of a spill into or on any land or water to the 100 kilogram per month small quantity generator limitation if there are polyhalogenated aromatic hydrocarbons in the waste.

30.355 This amendment prohibits the use of waste oil as a dust suppressant or road treatment.

30.616 This amendments renames this section to include special handling requirements for polyhalogentated aromatic hydrocarbons.

30.616(5) This amendment restricts the disposal of polyhalogenated aromatic hydrocarborns in surface impoundments unless the facility obtains permissions from the DEQE and the Administrator of Region I based upon a submitted management plan. This plan should include information concerning the characteristics of the waste to be impounded; the physical properties of the surrounding soils and material co-disposed with these waste and information about the facilities treatment, design or monitoring techniques.

30.628 This amendment renames this section to include special handling requirements for polyhalogenated aromatic hydrocarbons.

30.628(3) This amendment places limitations on the disposal of polyhalogenated aromatic hydrocarbons, in landfills unless the facility is in full compliance with the requirements of this section, and has had a management plan approved by the DEQE and the Administrator of Region I. The management plan should include information concerning the waste characteristics, mobilization properties of the waste co-disposed and properties of the surrounding soils.

30.646 This amendment renames this section to include special handling requirements for polyhalogenated aromatic hydrocarbons.

30.646(4) This amendment restricts the disposal of polyhalogenated aromatic hydrocarbons in waste piles unless the facillity gets permission from DEQE and the Administrator of Region I after having submitted a management plan. Information included in this management plan should include the waste characteristics, mobilization properties of the waste co-disposed and the properties of the surrounding soils.

30.657 This amendment renames this section to include special handling requirement for polyhalogenated aromatic hydrocarbons.

30.657(4) This amendment places limitations on the disposal of polyhalogenated aromatic hydrocarbons in a land treatment facility unless the facility obtains permission from the DEQE and the Administrator of Region I, upon receiving a facility management plan. This plan should include information concerning the characteristics of the waste to be treated at a land treatment facility, the physical properties of the sourrounding soils, material co-disposed with these waste and the treatment, design or monitoring techniques employed.

30.686(2) This amendment defines the contingency plan criterion for polyhalogenated aromatic hydrocarbons.

30.687(4) This amendment requires that a containment system be established for storage areas holding tanks containing polyhalogenated aromatic hydrocarbons.

30.695(4) This amendment specifies that storage or treatment tanks containing polyhalogenated aromatic hydrocarbons must have a detection system, a containment system and a contingency plan for responding to spills or leaks from the treatment or storage tank.

30.804(18)M This amendment places an additional license requirement on surface impoundments which handle wastes containing polyhalogenated aromatic hydrocarbons.

30.804(19)M This amendment places additional license requirements on landfills which handle hazardous waste containing polyhalogenated aromatic hydrocarbons.

30.804(20)j This amendment specifies additional license requirement on waste piles which handle hazardous waste containing polyhalogenated aromatic hydrocarbons.

30.804(21)j This amendment places additional license requirements on land treatment facilities which handle hazardous waste containing polyhalogenated aromatic hydrocarbons.

30.804 (25)(a)2 This amendment states that a description of design specification should be submitted to the DEQE to demonstrate that the facility is in compliance with regulations governing storage tanks. This design specification should include drawings, identification of construction materials; identification of lining materials and their pertinent characteristics.

30.804(25)a(9) This amendment states that facilities which store or treat hazardous waste in tanks should submit a description of design specifications to show compliance with storage tank regulations. This report should include information about the capacity of the tanks within the system.

30.804(25)a(10) This amendment states that facilities which store or treat hazardous waste in tanks should submit a description of design specification to show compliance with regulations governing storage ganks. This summary should include a description of the system to detect leaks and spills. Information concerning how precipitation and run-on will be prevented from entering the detection system is also requested.

7.08(4)h(4) This amendment sets the standards for buring Polyhalogenated Aromatic hydrocarbons in hazardous waste incinerators. These incinerators should achieve a destruction and removal efficiency of 99.9999% for each principal organic hazardous constituent. The incinerator performance should be demonstrated on more difficult to incinerate constituents than tetra-, penta-, and hexachlorodibenzo-p-dioxan and dibenzo furans.

** non-text page **

310 CMR 30.010 is hereby amended by adding the following definition in alphabetical order

Polyhalogenated aromatic hydrocarbons is defined as meaning waste F020, F021, F022, F026, F027, and F028.

310 CMR 30.099 is amended by inserting the following subsection:-

(14) The owner or operator of a facility having interim status pursuant to RCRA is prohibited from managing hazardous waste containing polyhalogenated aromatic hydrocarbons.

310 CMR 30.130 is hereby amended by inserting the following codes in numerical order

F020 Waste (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticides derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol).

F021 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.

F022 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.

F023 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol)

F026 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.

F027 Discarded unused formulations containing tri-tetra, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene sythesized from prepurified 2,4,5-trichlorophenol as the sole component)

F028 Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

310 CMR 30.133 is hereby amended by referencing the following waste:

U242	Pentachlorophenol	See F027
U242	Phenol, pentachloro-	See F027
U212	Phenol, 2,3,4,6,Otetrachloro-	See F027
U230	Phenol, 2,4,5, - trichholo-	See F027
U231	Phenol, 2,4,6,- trichloro-	See F027
U233	Propionic Acid; 2. (2,4,5,- trichlorophenoxy)-	See F027
U233	Silvex	See F027
U232	2,4,5, - T	See F027
U212	2,3,4,6,- Tetrachlorophenol	See F027
U230	2,4,5- trichlorophenol	See F027
U231	2,4,6- Trichlorophenol	See F027
U232	2,4,5 - Trichlorophenoxacetic acid	See F027

310 CMR 30.136 is hereby amended by revising the introduction to read as follows:

A waste is a acutely hazardous waste if it is listed in this section or is defined by waste numbers F020, F021, F022, F023, F026, F027 and F028

310 CMR 30.160 is hereby amended by inserting the following constituents in alphabetical order.

hexachlorodibenzo-p-dioxin
hexachlorodibenzo furans
pentachlorodibenzo-p-dioxin
pentachlorodibenzofurans
tetra chlorodibenzo-p-dioxin
tetrachlorodibenzo furans.

310 CMR 30.351 is hereby amended by revising the following paragraph:

(1)C Has not generated in a calendar month more than 1 kilogram of acutely hazardous waste listed in 310 CMR 30.136; 30.132; 30.133.

310 CMR 30.351 is hereby amended by revising the following paragraph

(1)C Does not generate in a calendar month more than a total of 100 kilograms of any residue, contaminated soil, water or other dbris resulting from the cleanup of a spill, into or on any land or water, of any acutely hazardous waste listed in 310 CMR 30.132, 30.133, 30.136.

310 CMR 30.355 is hereby amended by adding the following subsection:-

(8) The use of waste or used oil for dust suppression or road treatment is prohibited.

310 CMR 30.616 is hereby amended by renaming this section as follows:

"Special Requirements for Ignitable, Reactive, Incompatible, Polyhalogenated Aromatic Hydrocarbons and Acutely hazardous Waste"

310 CMR 30.616 is hereby amended by adding the following subsection:

(5) The owner or operator of a surface impoundment will not place polyhalogenated aromatic hydrocarbons in this facility unless the facility is operated in accordance with a management plan approved by the Administrator of Region 1, (pursuant to 40 CFR 264,231) and this Department. The following factors are to include:

(a) The volume, physical and chemical characteristics of the waste including their potential to migrate through the soil or to volatilize or escape into the atmosphere

(b) The attenuative properties of the underlying and surrounding soils or other materials.

(c) The mobilizing properties or the other materials co-disposed with these waste.

(d) The effectiveness of additional treatment, design or monitoring techniques.

(e) Additional design, operating and monitoring requirements may be required by the Department to ensure that these waste are managed in a way to reduce the possibility of migration of these waste to ground surface water or air.

310 CMR 30.628 is hereby amended by renaming this section as follows:

30628: <u>Special Requirements for Ignitable, Reactive Incompatible Waste or Polyhalogenated Aromatic Waste</u>

310 CMR 30.628 is hereby amended by adding the following subsection:

(3) Polyhalogenated aromatics hydrocarbons shall not be placed in a landfill unless the owner or operator of the landfill complies with the requirement set forth in 310 CMR 30.612-615 and has a management plan which has been approved by the Regional Administrator and this Department. Factors to be considered are:

(a) The volume physical and chemical characteristics of the waste including their potential to migrate through the soil or to volatilize or escape into the atmosphere.

(b) The attennative properties of underlying and surrounding soil or other materials.

(c) The mobilization properties of other materials co-disposed with these wastes

(d) The effectiveness of additional treatment design or monitoring requirements.

(e) Additional design operating and monitoring techniques may be required to ensure that migration of these waste to ground water, surface water or air is prohibited.

310 CMR 30.646 is hereby amended by renaming this section to read as follows:

30.646: Special Requirements for Ignitable, Reactive or Acutely Hazardous Waste and Powders, Dusts or Friable Material and Polynalogenated Aromatic Hydrocarbons.

310 CMR 30.646 is hereby amended by adding the following subsection:

(4) Polyhalogenated aromatic hydrocarbons shall not be placed in waste piles that are not in compliance with 310 CMR 30.640, unless the owner or operator of the waste pile has a management plan that has been approved by Regional Administrator of Region I (Pursuant to 40 CFR 264.259) and this Department. Factors to be considered for approval are:

(a) The volume, physical, and chemical characteristics of the wastes including their potential to migrate through the soil or to volatilize or escape into the atmosphere;

(b) Attenuative properites of underlying and surrounding soils or other materials

(c) The mobilizing properties of underlying and surrounding soils or other materials

(d) The effectiveness of additional treatment, design or monitoring techniques.

(e) Additional design, operating and monitoring techniques may be required to ensure that migration of these waste to groundwater surface water, or air is reduced.

310 CMR 30.657 is hereby amended by renaming this section to read as follows:

30.657: Special Requirements for Ignitable, Reactive Acutely Hazardous Incompatible waste or Polyhalogenated Aromatic hydrocarbons.

310 CMR 30.657 is hereby amended by adding the following subsection:

(4) Polyhalogenated aromatic hydrocarbons shall not be placed in a land treatment facility unless the owners or operator of this facility has a management plan that has been approved by the Regional Administor of Region one pursuant to 40 CFR 264.283 and this Department. Factors to be considered in this management plan are:

(a) The volume, physical and chemical characteristics of the waste including their potential to migrate through soil or to volatilize or escape into the atmosphere

(b) The attenuative properties of the underlying and surrounding soils or other materials

(d) The effectiveness of additional treatment design or monitoring techniques.

(e) Additional design, operating and monitoring techniques may be required to ensure that migration of these waste to ground water, surface water or air is reduced.

310 CMR 30.686 is hereby amended by designating the initial paragraph as (1) and adding paragraph (2) as follows:

(2) For waste containing polynalogenated aromatic hydrocarbons tne contingency plan must include:

(a) A procedure for responding to spills or leaks of these materials into the containment system from the storage tank.

(b) Removal procedures of the waste from the system.

(c) The procedures for the replacement or repair of the leaking tank.

310 CMR 30.687 is hereby amended by adding the following section:

(4) The storage area in which the storage tanks containing polyhalagenated aromatic hydrocarbons that do not contain free liquids must have a containment system defined by paragraph (2) of this section.

310 CMR 30.695 is hereby amended by adding the following subsection:

(4) Tanks which are used for storing or treating polyhalogenated aromatic hydrocarbons are subject to the following requirements in addition to the requirements set forth in 310 CMR 30.693 and 30.694.

(a) Each tank must have a system which is designed and operated for detection and containment of spills or leaks. The design of any system should consider the following factor:

(1) The capacity of the tank

(2) The volume and characteristics of the waste stored or treated

(3) The method used for the collection of spills or leaks

(4) The construction materials used for the tank and containment system

(5) The method used to prevent precipitation and run-on from entering into this system

(b) The owner or operator must specify a contingency plan for responding to spills or leaks from the tank into the containment system in accordance to 310 CMR 30.521. This plan should include the following:

(1) The method of the removal of the wste from the tank

(2) The replacement or repair to the leaking tank

310 CMR 30.804 is hereby amended by adding the following subsection:

18 (M) For surface impoundments handling polyhalogenated aromatic hydrocarbons a waste management plan must be submitted. This plan should describe how the facility will be designed to comply with the requirements of 310 CMR 30.616(5).

310 CMR 30.804 is hereby amended by adding the following subsection:-

19 (M) For landfills handling polyhalogenated aromatic hydrocarbons a waste management plan must be submitted. This plan should describe how a facility will be designed to comply with the requirements of 310 CMR 30.628(3).

310 CMR 30.804 is hereby amended by adding the following subsection:-

20 (j) For waste pile facilities handling polyhalogenated aromatic hydrocarbons a waste management plan must be submitted. This plan should describe how a facility will be designed to comply with the requirements of 310 CMR 30.646(4).

310 CMR 30.804 is hereby amended by adding the following subsection:

21 (j) For land treatment facilities handling polyhalogenated aromatic hydrocarbons a waste management plan must be submitted. This plan should describe how a facility will be designed to comply with the requirements of 310 CMR 30.657(4)

310 CMR 30.804 25(2) is revised to read as follows:-

25 (a)2. A description of design specifications including drawings, identification of construction materials and lining materials and their pertinent characteristics (e.g., corrosion or erosion resistance);

310 CMR 30.804 is hereby amended by adding the following:

25 (a) 9. Capacity of the containment system relative to the design capacity of the tank(s) within the system.

10. Description of the system to detect leaks and spills and how precipitation and run-on will be prevented from entering into the detection system.

310 CMR 7.08 is hereby amended by adding the following subsection:

4(h)4 Owners or operators of hazardous waste incinerators burning polyhalogenated aromatic hydrocarbons, (as refined in 310 CMR 30.010) must:

a. Achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC).

b. Incinerator performance for POHC's must be demonstrated on more difficult to incinerate constituents than tetra-, penta-, and hexachlorodibenzo-p-dioxan and dibenzofurans.

c. DRE is determined in accordance to 310 CMR 7.08 (h)1

d. Notify this Department and the Administrator of Region one of the intent to incinerate Polyhalogenated Hydrocarbons.

Draft Discussion of Various Proposed Hazardous Waste Management Regulations.

30.099(13) This amendment prohibits facilities having interim status from disposing of hazardous waste in salt domes, salt bed formation, underground mines or caves.

30.104 This amendment expands the source of generation of household waste to include waste derived from bunkhouses, rangers station, crew quarters, camp and picnic grounds and day-use recreations areas. An exemption from regulations is given to resource and recovery facilities which receive household waste and non-hazardous solid waste from industries.

30.133 This amendment defines constitutents listed in this section as hazardous waste when they are mixed with used oil, waste oil or other materials and or used as a fuel or a component of a fuel to be distributed or burned.

30.136(1)f This amendment defines as an acutely hazardous waste any constituents or intermediate of a constituent listed in this section which is mixed with used oil or waste oil.

30.156 This amendment specifies a test which can be used to determine the presence or absence of free liquids in hazardous waste.

30.332(1)e This amendment requires that generators of hazardous waste must include in their annual report a description of programs which reduced the volume and toxicity of waste generated during that calendar year and the volume and/or quantity and toxicity of the waste produced.

30.332(1)f This amendment requires that generators of hazardous waste include in their annual report a description of volume and toxicity changes. To the extent that the information is available these changes should be compared to volume and toxicity levels of waste generated in previous years.

30.351(7) This amendment stipulates that small quantity generators have a time limit of 170 days in which to accumulate hazardous waste at the site of generation.

30.361(2)d This amendment requires that generator who export their hazardous waste submit by March 1 of each year an annual report which summarizes the following information:-

1. Type of hazardous waste generated
2. Quantities of hazardous waste generated
3. Frequency of exporting the hazardous waste
4. Ultimate destination of exported hazardous waste

30.544(8) This amendment requires that the owner or operator of a hazardous waste management facility submit in their annual report a certification statement that describes the programs which reduce the volume and toxicity of hazardous waste that he generates. The owner or operator should also include varification that the proposed method of treatment, storage, or disposal is the most practicable method currently available that minimizes the present and future threat to human health, safety, and the environment.

30.612(1) This amendment permits liners of surface impoundments to be constructed of materials which allow the waste to migrate into the liners provided that the facility is closed according to requirements 1 and 2 of the Closure and Post-Closure Care regulations (30.617).

30.612(2) This amendment places additional structural requirements on the bottom liners of surface impoundments. These requirements stipulate that the liners be constructed of recompacted clay which is three feet in thickness. The hydraulic conductivity of the liner must not exceed 1×10^{-7} CM/sec.

30.612(11) This amendment specifies the criterion for obtaining waivers of the double liner requirement for surface impoundments. Waivers are obtained from the Administrator of Region I and this Department if:

1. A monofill contains hazardous waste only from foundry operations.

2. A monofill has no leaking liners.

3. The monofill is located more than 1/4 mile from a source of underground drinking water.

4. The monofill is in compliance with applicable groundwater monitoring requirements.

5. The location, design and operations of the monofill is such that no migration of hazardous waste will occur into the ground or surface water at any future time.

30.613(1) This amendment allows the replacements of existing surface impoundment units and the laterial expansion of an existing impoundment unit to be regulated under the existing requirements.

30.629(1)(2) These amendments specify the use of the Paint Filter test as a means of determining the pressure of liquids in hazardous waste.

30.634(1) This amendment specifies the requirements for new landfills units replacements of landfill units, and lateral expansions of landfill units at existing landfills. Aside from complying with the requirements for liners, leak detection, and leachate collection systems, a facility must also comply with additional bottom liner requirements. The bottom liner must be at least 3 ft. in thickness with a permeability of no more than 1×10^{-7} CM/SEC.

30.634(2) This amendment states the criterion for obtaining waivers from the double liner requirements for landfill facilities. Waivers are obtained from the Administrator of Region I and this Department if:

1. A monofill contains hazardous waste only from foundry operations.

2. A monofill has no leaking liners.

3. The monofill is located more than 1/4 mile from a source of underground drinking water.

4. The monofill is in compliance with applicable groundwater monitoring requirements.

5. The location, design and operations of the monofill is such that no migration of hazardous waste will occur into the ground or surface water at any future time.

30.642 This amendment rescinds the exemption from inspection requirements of double lined piles. Due to this action all owners of waste piles are required to inspect their waste pile liners in accordance with 310 CMR 30.643.

30.687(3) This amendment waives the requirement for a containment system in the storage area if the storage containers do not hold waste which contain free liquids.

30.707 This amendment prohibits the placement of noncontainerized or bulk liquid hazardous waste in any salt dome, salt bed formation underground mine or cave.

30.803(13) This amendment includes any requirment found in the federal regulations, 40 CFR 270, that is not covered in the state regulations 310 CMR 30.800 by referance.

30.804(10)b This amendment status that facilities who are requesting operating licenses are required to have a corrective action program.

30.825(3) This amendment specifies the procedure to be taken in the event that a discrepancy in the manifest is found. After a 15 day waiting period a facility must submit to this Department a report describing the discrepancy and the steps taken to reconcile it.

30.825(11) This amendment stipulates that corrective action; compliance schedules for corrective action and assurance of financial responsibility are conditions of facilities licenses.

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310 CMR 30.099 is hereby amended by adding the following subsection:-

(13) An owner or operator of a facility having interim status pursuant to RCRA is prohibited in placing any hazardous waste in salt domes, salt bed formation, underground mines or caves.

310 CMR 30.104 is hereby amended by striking out subsection (6) and by inserting the following new subsection (6):-

(1) Household waste, including household waste that has been collected, transported stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility ---

(i) Receives and burns only
(A) Household waste (from signle and multiple dwellings, hotels motels, and other residential sources) and
(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and
(ii) Such facility does not accept hazardous waste and the owner or operator of such facility has established contractural requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

310 CMR 30.133 is hereby amended by inserting the following subsection:-

(4) Any residues mixed with waste oil or used oil or other material when in lieu of their original intended use, they are produced for use as (or as a component of) a fuel distributed for use as a fuel or burned as a fuel.

310 CMR 30.136 is hereby amended by inserting the following section:-

1(f) Any residue containing a chemical intermediate or chemical product having the generic name listd in this section that is mixed with waste oil or used oil

310 CMR 30.00 is hereby amended by adding the following section:

30.156 Paint Filter Liquids Test

To determine the presence or absence of free liquids in waste the following procedure should be used: Paint Filter Liquid Test, Method 9095 as specified in "Test methods for Evaluating Solid Waste Physical/Chemical Methods." EPA Publication No. 5N-846 second edition and updates one and two. Superintendant of Documents, U.S. Government Printing Office Washington D.C., 20401, (202) 783-3228.

310 CMR 30.332 is hereby amended by inserting the following subsections:-

1(e) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

1(f) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

310 CMR 30.351 is hereby amended by revising the following subsection:

(7) If the amounts of hazardous waste accumulated by a small quantity generator never exceed the amounts stated in 310 CMR 30.351(1)(b),(d)(3), and (f), the small quantity generator may accumulate that hazardous waste at the site of generation for a period not to exceed one hundred and seventy (170) days.

310 CMR 30.361 is hereby amended by inserting after subsection 2(c) the following:-

2(d) The Exporter of hazardous waste identified or listed in 310 CMR 30.120 through 30.136 shall file with the Department no later than March 1 of each year, a report summarizing the types, quantities, frequency and ultimate destination of all such hazardous waste exported during the previous calendar year.

310 CMR 30.544 is hereby amended by inserting the following:

(8) Certification submitted by the owner or operator of a facility that:

(a) a program is in place to reduce the volume and toxicity of hazardous waste that he generates.

(b) the proposed method of treatment, storage, or disposal is the most practicable method currently available to the owner or operator which minimizes the present and future threat to human health and the environment.

310 CMR 30.612 (1) is hereby amended by revising the section as follows:

(1) The liners may be constructed of materials, (eg., clays and admixes). That allow waste to migrate into the adjacent groundwater, surface water or subsurface soil during the active life of the facility, provided that the impoundment is closed in compliance with 310 CMR 30.617(1) and (2) and does not violate groundwater standards during the life of the surface impoundment.

310 CMR 30.612(2) should be amended by adding the following subsection:-

(b) Should be constructed of at least a 3-ft thick layer of recompacted clay or other material with a hydraulic conductivity not to exceed 1×10^{-7} cm/sec.

310 CMR 30.612 is hereby amended by adding the following subsection:

(11) A facility can apply for a waiver of the double liner requirement set forth in paragraph (1) and (2) of this section from this department if the Administrator of region 1 grants permission pursuant to 40 CFR 264.221, if:

(a) The monofill contains only hazardous waste from foundry furnanace emmission controls or metal casting molding and sand and such wastes do not contain constituents which would render the waste hazardous for reasons other than EP toxicity characteristics in 310 CMR 30.125.

(b) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility or a liner designed, constructed installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility.

(i) In the case of any surface impoundment which has been exempted from the requirements of paragraph (1) of this section on the basis of a liner designed, constructed, installed and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material and contaminated soil to the extent practicable.

(ii) If all contaminated soil is not removed or decontaminated the owner or operator of such impoundment will comply with appropriate post-closure requirements including but not limited to ground water monitoring and corrective action.

(c) The monofill is located more than one-quarter mile from an underground source or planned source of drinking water.

(d) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permitted under RCRA 3005(c)

(e) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituents into groundwater or surface water at any future time.

310 CMR 30.613 is hereby amended by revising the first paragraph to read as follows:

(1) Except as provided in 310 CMR 30.613(2) or (4) the owner or operator of each existing surface impoundment, each replacement of an existing surface impoundment and each lateral expansion of an existing surface impoundment shall comply with the requirements for liners and leak

detection, collection and removal systems specified in 310 CMR 30.612(1) and 30.612(3) within a period of time which shall be specified by the Department in the license. This period of time shall not exceed four (4) years from the date of license issuance pursuant to 310 CMR 30.838.

310 CMR 30.629 is hereby amended by revising the following paragraphs.

(1) Non-containerized liquid waste or waste containing free liquids (as determined by the Paint Filter Test 310 CMR 30.156) shall not be placed in a landfill.

(2) A container holding liquid waste or waste containing free liquids (as determined by the Paint Filter Test 310 CMR 30.156) shall not be placed in a landfill.

310 CMR is hereby amended by inserting the following subsections:-

30.634 Special Provision for Existing Portion's of Existing Landfills

(1) The owner or operator of each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit, must install two or more liners and leachate collection system above and between the liners. The liners and leachate collection system must protect human health and the environment. The requirement for the installation of two or more liners in this paragraph may be satisfiecd by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than $1x10^{-7}$ centimeter per second

(2) A facility can apply for a waiver of the double liner requirement set forth in paragraph (1) of this section from this department if the Administrator of Region 1 grants permission pursuant to 40 CFR 264.301(e) if:

a. The monofill contains only hazardous waste from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the waste hazardous for reasons other than the EP toxicity characteristics in 310 CMR 30.125.

b. The monofill has at least one liner for which there is no evidence that such liner is leaking.

c. The monofill is located more than one-quarter mile from an underground source of drinking water (as defined in CFR 144.3).

d. The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under RCRA 3005(c).

e. The owner or operator demonstrates that the monofill is located designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time

310 CMR 30.642 is amended by removal.

310 CMR 30.687 is hereby amended by revising the first paragraph as follows:

(3) Storage areas that store containers holding waste that do not contain free liquids need not have a containment system defined by paragraph (2) of this section except as provided by paragraph (4) of this section or provided that:

310 CMR is hereby amended by revising the first paragraph as follows:

30.707 Disposal into salt dome and salt bed formations underground mines and caves

The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited.

310 CMR 30.803 is hereby amended by inserting the following subsection:

(13) License requirements pursuant to 40 CFR 270 which are not covered in 310 CMR 30.800.

310 CMR 30.804 is hereby amended by adding the following subsection:

10(b) The owner or operator of a facility must institute corrective action pursuant to 310 CMR 30.672 to protect the public's health and the environment for all release of hazardous waste or any constituents for any solid waste management unit regardless of the time at which the waste was placed at the unit.

310 CMR 30.825 is amended by striking out subsection (3) and inserting in its place the following subsection:

(3) Manifest Discrepancy Report. If the licensee discovers a significant discrepancy in a minfest or shipping paper, the licensee shall attempt to reconcile the discrepancy. With 15 days after the receipt of the hazardous waste by the facility, the owner or operator shall submit to the department a report describing the discrepancy and an attempt to reconcile it. A copy of the manifest or shipping paper at issue shall accompany this report.

310 CMR 30.825 is hereby amended by adding the following subsection:

11. Corrective action will be specified in the license. The license will contain schedules of compliance for such corrective action (where corrective action cannot be completed prior to issuance of the license) and assurances of financial responsibility for completing such corrective action.

Water Pollution Conforming Amendments

The following proposed amendments will allow the Department's regulations on water pollution control to conform to the hazardous waste regulations as amended

The third paragraph of 314 CMR 2.01 is hereby amended by striking out the words "December 31, 1985" and inserting in place thereof the words:- July 1, 1986

The third paragraph of 314 CMR 3.01 is hereby amended by striking out the words "December 31, 1985" and inserting in place thereof the words:- July 1, 1986

The third paragraph of 314 CMR 5.01 is hereby amended by striking out the words "December 31, 1985" and inserting in place thereof the words:- July 1, 1986

The third paragraph of 314 CMR 8.01 is hereby amended by striking out the words "December 31, 1985" and inserting in place thereof the words:- July 1, 1986

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